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Supreme Court, U.S.
FILED

No. 09-867 SEP 18 2009

OFFICE OF THE CLERK
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In The

Supreme Court of the United States

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DONALD L. MORRISON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

◆

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

◆

PETITION FOR WRIT OF CERTIORARI

◆

DONALD L. MORRISON
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QUESTIONS PRESENTED

Should the Supreme Court allow a District Court, the District Attorney and the Assistant District Attorneys to target innocent citizens with illegal charges, false evidence, hearsay evidence and to convict individuals without a single written complaint or without sworn investigative testimony supporting that a crime was actually committed as it happened to the Defendant petitioner?

Should the Supreme Court allow a Sentencing Memorandum, sent to the District Court by Defendant's Court appointed assistant counsel, to be used to convict the Defendant of mail fraud in the amount of $26,988 for insurance payments sent for another company which had site losses in Virginia outside the jurisdiction of the North Carolina court?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

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OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix F to the petition and is unpublished.

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JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 18, 2009.

> A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 28, 2009, and a copy of the order denying rehearing appears at Appendix G.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. V (Due Process Clause)

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STATEMENT OF THE CASE

Petitioner, Donald L. Morrison, was indicted (second superseding indictment) by the Federal grand jury in the Eastern District of North Carolina on March 19, 2002, and charged with conspiracy to commit federal crimes and substantive counts of making false statements, mail fraud, and money laundering. Petitioner was found guilty after trial by jury on November 22, 2009. Defendant was sentenced by the Honorable David Faber, United States District Judge, on December 5, 2007, to a term of imprisonment of 27 months.

Defendant timely filed notice of appeal from the judgment and commitment on December 12, 2007. The Fourth Circuit Court of Appeals affirmed Petitioner's conviction by unpublished opinion on June 18, 2009. Petitioner filed a Petition for Rehearing on June 30, 2009, which was denied on July 28, 2009.

The Defendant contends from the beginning that all counts in the indictment were invented by Wayne Myers, USDA Chief Inspector. Using terror tactics, he and the prosecutor, David Cortes convinced the CCI President, Vice President and the Treasurer to plea bargain. The plea bargains were based on individual failures to use USDA Transfer forms FNS-300 when moving food stamps between the main vaults in Raleigh, NC to distribution sites in various parts of the State. It was legally obvious that this particular form 300 was used to transfer storage authority from one government agent to another like agents both identified by nine-digit project codes. (At trial, a regional representative testified that CCI was not issued a project code.) All CCI employees were moving stamps to other like employees for site distribution while the storage responsibility remained the same. Besides, it would have been illegal for them to use form 300 without a project code. CCI was also fined $52,600 because the individuals didn't use that form 300. Thus, the Defendant was found guilty before the trial started based on the prosecutor believing Myers that the transfer of food stamp storage responsibility was the same as moving food stamps.

No person from the food stamp office in Raleigh or any food stamp official testified that CCI broke any regulations of the Federal Food Stamp Program. The Hartford Ins. Co. never made a complaint. The USDA investigator was present for each day of the trial and sentencing but was never called on by the prosecutor to testify. Myers was never subjected to cross-examination.

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PROOF OF PROSECUTORIAL MISCONDUCT

The company CCI was a private business which mail-issued food stamps on behalf of county Department of Social Services for some twenty years in four states. Centurion Courier, Inc. was a subcontractor issuing food stamps over-the-counter in the States of Virginia and North Carolina from 1994 to 1997 when

CCI bought out Centurion Courier. Neither company was under the jurisdiction of the States or Federal Government while issuing food stamps in North Carolina. Neither company nor its employees was allowed to use any Federal USDA forms or required to make reports to any Federal body regarding the conduct of the Food Stamp Program. Clearly, neither company could be held accountable under Federal law for issuing food stamps on behalf of counties seeking to contract out the issuance to a private concern.

Enclosed is the sentencing document convicting the Defendant of one count under Title 18 USC 371 and four counts under Title 18 USC 1001 & 2. The one count under USC 371 is for mail fraud and the other three are for false county USDA, FNS 250 monthly reports.

Enclosed is the court document of the result of CCI suing Lewis Chester & Associates and Robert Kolar during the year 2000, which was dated two years before the indictment. CCI charged that Robert Kolar processed county/city site claims to the Hartford Ins. Co. as mail losses. He did this to reduce the amount of CCI's insurance recovery for the years 1995 & 1996 by changing the deductible from $250 per site loss to $5000 per quarter for mail losses. The settlement was for CCI in the amount of $25,000.

This exculpatory evidence was delivered by Dennis Duffy, U.S. Prosecutor, upon my appointment as pro se in October 2006. This action negates the Justice Department's case against the Defendant in many ways:

1. This eliminates the possibility that CCI induced Hartford payment of false claims by using an illegal scheme.
2. This proves that Robert Kolar initiated a scheme to fraud CCI to benefit himself and the Hartford Ins. Co.
3. This eliminates any possibility that the Defendant, CCI or its employees were engaging in any form of mail fraud by sending all county/city claims to its insurance agent/carrier.
4. Lastly, this proves that prosecutor fraud was used to charge, convict, and jail the Defendant before sentencing him for mail fraud and a fine in the amount of $79,998.

Appendix E proves that the first 16 charges of the indictment under Title 18 USC 1001 & 2 was prosecutorial misconduct for the following reasons:

1. CCI did not submit any FNS 250 issuance reports to North Carolina or USDA. Only the county can do that.
2. The counties in question certified incomplete 250 reports by their failure to include on line 22 the monthly CDRR report which was correctly submitted by CCI each month.

CCI assisted the counties involved without pay to correct their reporting errors in July 1998. This was over 4 years before the November 2002 trial. There were no damages to any party since the FNS 250 report is correctible as many times as needed at any time.

SUMMARY:

The prosecutor's office illegally criminalized county reporting errors (App. 30) and incorrect claim processing by CCI's insurance agent to falsely charge the Defendant with crimes that did not exist.

A CRITICAL POINT OF LAW:

Enclosed is the sentencing judgment handed down by Judge David A. Faber. I was not charged with mail fraud under Title 18 USC Section 1341 separately on the sentencing order but the Court used the same charge as part of USC Section 371 being item e as in the indictment: mail fraud, Section 1341. The judgment of fine and restitution was based on NC mail fraud in the amount of $26,988 and the dates are consistent with the end of the Hartford insurance coverage as discussed by the prosecutor at trial on 12/5/07. Further, the remaining three sentence counts of Title 18 USC Section 1001 & 2 are item d of the indictment concerning Section 371. The remaining charges were dropped. Thus, a mini-trial was conducted without notice and the hearsay evidence of the prosecutor was used in place of witness testimony or display of physical proof.

REASONS FOR GRANTING THE WRIT

1. There should be a law protecting stockholders in a sub-chapter S corporation who own less than 50% of the outstanding stock and who are not officers of the company from being prosecuted by the Justice Department as was Petitioner.

2. The Justice Department should not be allowed to target innocent persons for political, financial or personal reasons using false charges, false or lack of evidence along with hearsay evidence to convict individuals with impunity with the full support of the Appeals Court as was the case in which the Petitioner was convicted.

3. The Supreme Court should not have the latitude to refer cases to the F.B.I. for the investigation of amoral court personnel who are misusing the law for personal gain, political benefits, or financial reasons as in the Petitioner's case.

Other contributed reasons:

4. The Justice Department is required by law to drop the indictment when false charges appear therein.

5. For convictions, the Court should not be allowed to accept the hearsay evidence of the prosecutor in place of the testimony of the investigating officer.

6. The Court should be required to ask for the testimony of the investigating officer over

the hearsay evidence of the prosecutor according to due process.

7. Conviction cannot occur without evidence or testimony based only on assumption of guilt during a short trial held at sentencing.

8. It is illegal for a trial IN REM to be held three days before sentencing without notice to the defendant's trial lawyer and conviction based only on the affidavit of the investigating officer who failed to testify at trial because he knew the charges were false.

9. It is illegal for the Fourth Circuit Court to refuse to take evidence from a member of the same convicting court that proves the Petitioner is innocent.

10. The legal role/purpose of the Fourth Circuit Court is to take action in an appeal based on documents that show that false charges were made by the prosecuting attorney, that there was a lack of evidence to confirm conviction and that false evidence was used, and then be able to state that the appeal lacks merit while affirming the conviction.

11. It is illegal for the Fourth Circuit Court to no longer seek the truth and affirm conviction by just stating the appeal lacked merit as occurred for the Petitioner.

12. It does not serve the purpose of law when the Justice Department can convict with impunity knowing they will not be brought forward for censure if they cease using evidence, documentation and informed testimony

to obtain convictions as happened in the case of the Petitioner.

13. It does not serve the role of the Supreme Court to choose not to be involved when lower courts no longer follow due process, rules of evidence and commit violations of civil rights in obtaining false convictions, which are then affirmed by the Appellate Courts without proper documentation.

14. There should be a legal remedy when the Justice Department takes from the Petitioner over $160,000 based on false evidence using a canceled Hartford check marked "Contents Loss" as proof of an "illegal site claim payment" when it was a payment sent to CCI for Robeson's County, NC mail loss claim.

15. The legal role of the Supreme Court should be to illuminate the illegal behavior of Justice Personnel who used their power of office to convict the Petitioner using false charges, false hearsay statements and submitting false evidence for a crime that didn't exist.

16. The Justice Department should not act in cooperation with the NC Prisons System to continue to list an individual as a prisoner after release to make the person ineligible for Medicare as is currently the case with the Petitioner.

◆

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

DONALD MORRISON

Date: January 19, 2010

APPENDIX A

DJC

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:01-CR-276-1-BO3
NO. 5:01-CR-276-2-BO3
NO. 5:01-CR-276-3-BO3
NO. 5:01-CR-276-4-BO3

UNITED STATES OF AMERICA)
)
v.)
) INDICTMENT
COST CONTAINMENT, INC.) (Second Superseding)
DONALD MORRISON) (Filed Mar. 19, 2002)
PARKE STEVEN ("STEVE") WAGNER)
ROBERT C. WAGNER, JR.)

The Grand Jury charges:

At all times relevant to this Indictment:

INTRODUCTION

1. Cost Containment, Inc. (hereafter, "CCI"), was a corporation whose principal place of business was at 3305-C Durham Drive, Raleigh, North Carolina. The main business of CCI was to distribute food stamps to people living in various counties of North Carolina, Virginia, and Ohio. CCI's distribution of food stamps

was pursuant to contracts with the various counties in which CCI was doing business.

2. Donald Morrison was an officer and majority stockholder of CCI.

3. Parke Steven ("Steve") Wagner was an officer of CCI.

4. Robert C. Wagner, Jr., was the Treasurer and Controller of CCI. His main duties were to maintain financial records and travel to CCI sites to monitor CCI's operations.

5. The United States Department of Agriculture (USDA) is in the executive branch of the Government of the United States and administers the Food Stamp Program.

6. The Food Stamp Program is a governmental program administered by the United States Department of Agriculture (USDA) through the Food and Nutrition Service in each state, the purpose of which is to assist with the basic nutritional needs of needy Americans.

COUNT ONE

7. In or about June 1988, and continuing to the present, in the Eastern District of North Carolina and elsewhere, the exact dates being unknown to the grand jury, the defendants, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER,

JR., along with others both known and unknown to the grand jury, did knowingly and willfully combine, conspire, confederate, and agree together and with others:

a. to defraud the United States of its right to have the United States Department of Agriculture's Food Stamp Program run according to law and regulations, in violation of Title 7, United States Code, Section 2011;

b. to convert to their own use of food stamps issued by the USDA, in violation of Title 18, United States Code, Section 641;

c. to acquire, possess, and transfer food stamps in an unauthorized manner, in violation of Title 7, United States Code, Section 2024;

d. to make materially false statements to the United States Department of Agriculture (USDA) regarding the inventory of food stamps at CCI's distribution sites, in violation of Title 18, United States Code, Section 1001;

e. to use the mail to defraud Hartford Insurance Company [ ], in violation of Title 18, United States Code, Section 1341; and

f. to commit money laundering in violation of Title 18, United States Code, Section 1956 and 1957.

MANNER AND MEANS OF THE CONSPIRACY

8. It was part of the conspiracy that:

   a. CCI would obtain, through an insurance broker, an inland marine insurance policy that would insure CCI against the loss of food stamps while in mail transit.

   b. CCI would obtain this policy by making materially false and fraudulent statements and representations to the insurance broker and the insurer, as to the manner of its business operations and its history of loss.

   c. CCI would store food stamps at sites not identified to its broker or insurer.

   d. CCI would distribute food stamps from sites not identified or covered under its insurance policy.

   e. CCI would distribute food stamps over the counter, rather than by mail as specified in its insurance policy.

   f. CCI would conceal losses and shortages of food stamps from the counties with whom it had contracted and from the USDA by issuing monthly reports, Forms FNS-250, that falsely stated the inventory of food stamps on hand at various CCI distribution sites.

   g. CCI would conceal losses and shortages of food stamps by maintaining a dual set of records, one set reflecting the true inventory of food stamps kept at various sites and the other reflecting a false inventory.

h. CCI would conceal losses and shortages of food stamps by maintaining a "slush fund" of food stamps which was used, among other things, to replenish the store of food stamps at sites that had shortages.

i. CCI would use the United States Postal Service to file false insurance claims for food stamps that were lost in a manner that CCI knew was not covered by CCI's inland marine insurance policy.

j. CCI would use the United States Postal Service to file false insurance claims for food stamps lost at sites that CCI knew were not covered by CCI's inland marine insurance policy.

OVERT ACTS

9. In furtherance of the conspiracy and to effect the objects and purposes thereof, the defendants, CCI, DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., together with others known and unknown to the grand jury, committed overt acts in the Eastern District of North Carolina and elsewhere, including, but not limited to the following:

a. On or about January 5, 1994, the defendants caused correspondence to be sent to Hartford Insurance Company [] in application for an insurance policy that would cover losses incurred by CCI in the distribution of food stamps;

b. On or about August 24, 1994, the defendants caused correspondence to be sent to Hartford Insurance Company [ ] in application for an insurance policy that would cover losses incurred by CCI in the distribution of food stamps;

c. On or about October 24, 1994, the defendants caused correspondence to be sent to insurance broker Lewis Chester and Associates in application for an insurance policy that would cover losses incurred by CCI in the distribution of food stamps;

d. On or about December 16, 1994, the defendants entered into a contract with Hartford Insurance Company [ ] for inland marine insurance that would cover contractually defined losses incurred by CCI in the distribution of food stamps.

e. On or about September 24, 1996, the defendants purchased a building at 1305 Bells Mill Road, Chesapeake, Virginia, and used the property to store food stamps.

f. On or about February 10, 1997, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Gaston County, North Carolina.

g. On or about February 10, 1997, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Harnett County, North Carolina.

h. On or about February 10, 1997, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Mecklenburg County, North Carolina.

i. On or about February 10, 1997, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Onslow County, North Carolina.

j. On or about February 10, 1997, the defendants prepared a Form FNS-250, Food Stamp. Accountability Report, that falsely stated the ending inventory of food stamps for New Hanover County, North Carolina.

k. On or about February 10, 1997, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Robeson County, North Carolina.

l. On or about February 10, 1997, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Rowan County, North Carolina.

m. On or about February 10, 1997, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Wilson County, North Carolina.

n. On or about June 2, 1998, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Gaston County, North Carolina.

o. On or about, June 2, 1998, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Mecklenburg County, North Carolina.

p. On or about June 2, 1998, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Onslow County, North Carolina.

q. On or about June 2, 1998, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for New Hanover County, North Carolina.

r. On or about June 2, 1998, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Robeson County, North Carolina.

s. On or about June 2, 1998, the defendants prepared a Form FNS-250, Food Stamp Accountability Report, that falsely stated the ending inventory of food stamps for Rowan County, North Carolina.

t. On or about June 2, 1998, the defendants prepared a Form FNS-250, Food Stamp

Accountability Report, that falsely stated the ending inventory of food stamps for Wilson County, North Carolina.

u. On or about August 25, 1997, the defendants caused correspondence containing false and fraudulent representations to be sent to Hartford Insurance Company concerning CCI claim no. 693 IM 90158.

v. On or about March 31, 1997, the defendants caused correspondence containing false and fraudulent representations to be sent to Hartford Insurance Company concerning CCI claim no. 693 IM 73972.

w. On or about March 31, 1997, the defendants caused correspondence containing false and fraudulent representations to be sent to Hartford Insurance Company [ ] concerning CCI claim no. 693 IM 85827.

x. On or about November 14, 1997, the defendants caused correspondence containing false and fraudulent representations to be sent to Hartford Insurance Company concerning CCI claim no. 693 IM 85205.

y. On or about May 21, 1998, the defendants caused correspondence containing false and fraudulent representations to be sent to Hartford Insurance Company concerning CCI claim no. 693 IM 87613.

z. On or about December 11, 1997, the defendants caused correspondence containing false and fraudulent representations to be sent to

Hartford Insurance Company concerning CCI claim no. 693 IM 90226.

aa. Between on or about January 1, 1988, and June 30, 1998, the defendants maintained on CCI's premises a so-called "slush fund" of food stamps.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

On or about February 10, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Gaston County, North Carolina, for January 1997, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT THREE

On or about February 10, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Harnett County, North Carolina, for January 1997, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT FOUR

On or about February 10, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Mecklenburg County, North Carolina, for January 1997, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT FIVE

On or about February 10, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, knowing the same to be false, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Onslow County, North Carolina, for January 1997, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT SIX

On or about February 10, 1997, in, the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for New Hanover County, North Carolina, for January 1997, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT SEVEN

On or about February 10, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Robeson County, North Carolina, for January 1997, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT EIGHT

On or about February 10, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Rowan County, North Carolina, for January 1997, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT NINE

On or about February 10, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Wilson County, North Carolina, for January 1997, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT TEN

On or about June 2, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Gaston County, North Carolina, for May 1998, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT ELEVEN

On or about June 2, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Mecklenburg County, North Carolina, for May 1998, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT TWELVE

On or about June 2, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Onslow County, North Carolina, for May 1998, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT THIRTEEN

On or about June 2, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of

Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for New Hanover County, North Carolina, for May 1998, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT FOURTEEN

On or about June 2, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Robeson County, North Carolina, for May 1998, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT FIFTEEN

On or about June 2, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT

C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Rowan County, North Carolina, for May 1998, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT SIXTEEN

On or about June 2, 1998, in the Eastern District of North Carolina; the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly and willfully make and cause to be made a materially false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, within the executive branch of the Government of the United States; that is, the defendants did knowingly falsify and misrepresent upon a Form FNS-250, Food Stamp Accountability Report, the ending inventory of food stamps for Wilson County, North Carolina, for May 1998, in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT SEVENTEEN

On or about August 25, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., having devised a scheme and artifice to defraud Hartford Insurance Company, did, for the purpose of executing such scheme, knowingly cause to be delivered by mail and private interstate carrier certain correspondence concerning an insurance claim upon Hartford Insurance Company, 5832 Farm Pond Lane, Beaufort Building, Suite 400, Charlotte, North Carolina, the defendants then knowing that the said claim, No. 693 IM 90158, contained a material misrepresentation, namely, that food stamps that were the subject of the claim had been lost while in mail transit, the defendants then knowing this was false, and the defendants did aid and abet the commission of said offense, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT EIGHTEEN

On or about March 31, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., having devised a scheme and artifice to defraud Hartford Insurance Company, did, for the purpose of executing such scheme, knowingly cause to be delivered by mail and private interstate carrier certain correspondence concerning an insurance claim upon Hartford Insurance Company, 5832 Farm Pond Lane, Beaufort Building, Suite 400, Charlotte, North Carolina, the defendants then knowing that the said claim, No. 693 IM 73972, contained a material misrepresentation, namely, that food stamps that were the subject of the claim had been lost while in mail transit, the defendants then knowing this was false, and the defendants did aid and abet the commission of said offense, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT NINETEEN

On or about November 14, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., having devised a scheme and artifice to defraud Hartford Insurance Company, did, for the purpose of executing such scheme, knowingly cause to. be delivered by mail and private interstate carrier certain correspondence concerning an insurance claim upon Hartford Insurance Company, 5832 Farm Pond Lane, Beaufort Building, Suite 400, Charlotte, North Carolina, the defendants then knowing that the said claim, No. 693 IM 85205, contained a material misrepresentation, namely, that food stamps that were the subject of the claim had been lost while in mail transit, the defendants then knowing this was false, and the defendants did aid and abet the commission of said offense, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT TWENTY

On or about May 21, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., having devised a scheme and artifice to defraud Hartford Insurance Company, did, for the purpose of executing such scheme, knowingly cause to be delivered by mail and private interstate carrier certain correspondence concerning an insurance claim upon Hartford Insurance Company, 5832 Farm Pond Lane, Beaufort Building, Suite 400, Charlotte, North Carolina, the defendants then knowing that the said claim, No. 693 IM 87613, contained a material misrepresentation, namely, that food stamps that were the subject of the claim had been lost while in mail transit, the defendants then knowing this was false, and the defendants did aid and abet the commission of said offense, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT TWENTY-ONE

On or about December 11, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., having devised a scheme and artifice to defraud Hartford Insurance Company, did, for the purpose of executing such scheme, knowingly cause to be delivered by mail and private interstate carrier certain correspondence concerning an insurance claim upon Hartford Insurance Company, 5832 Farm Pond Lane, Beaufort Building, Suite 400, Charlotte, North Carolina, the defendants then knowing that the said claim, No. 693 IM 90226, contained a material misrepresentation, namely, that food stamps that were the subject of the claim had been lost while in mail transit, the defendants then knowing this was false, and the defendants did aid and abet the commission of said offense, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT TWENTY-TWO

On or about March 31, 1997, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., having devised a scheme and artifice to defraud Hartford Insurance Company, did, for the purpose of executing such scheme, knowingly cause to be delivered by mail and private interstate carrier certain correspondence concerning an insurance claim upon Hartford Insurance Company, 5832 Farm Pond Lane, Beaufort Building, Suite 400, Charlotte, North Carolina, the defendants then knowing that the said claim, No. 693 IM 85827, contained a material misrepresentation, namely, that food stamps that were the subject of the claim had been lost while in mail transit, the defendants then knowing this was false, and the defendants did aid and abet the commission of said offense, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT TWENTY-THREE

On or about June 13, 1999, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC. (CCI), DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., having devised a scheme and artifice to defraud Lambert Fenchurch International Group, Ltd. (Fenchurch), London, England, did, for the purpose of executing such scheme, knowingly cause to be delivered by mail and private interstate carrier certain correspondence concerning an insurance claim upon Fenchurch, the defendants then knowing that the said claim contained a material misrepresentation, namely, that the loss on which the claim was based occurred during the coverage of an insurance policy issued by Fenchurch to CCI, the defendants then knowing this representation was false, and the defendants did aid and abet the commission of said offense, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT TWENTY-FOUR

On or about June 30, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly use, transfer, acquire, and possess food stamp coupons valued at approximately $3,860 in a manner contrary to Chapter 51 of Title 7, United States Code, and did aid and abet each other in so doing, in violation of Title 7, United States Code, Section 2024(b), and Title 18, United States Code, Section 2.

COUNT TWENTY-FIVE

On or about June 30, 1998, in the Eastern District of North Carolina, the defendants herein, COST CONTAINMENT, INC., DONALD MORRISON, PARKE STEVEN ("STEVE") WAGNER, and ROBERT C. WAGNER, JR., did knowingly convert to their own use something of value of the United States, namely, food stamps issued by the United States Department of Agriculture, having a value exceeding $1,000, and did aid and abet each other in the said conversion, in violation of Title 18, United States Code, Sections 641 and 2.

COUNT TWENTY-SIX

On or about September 24, 1996, in the Eastern District of North Carolina, the defendant, DONALD MORRISON, knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, knowingly and willfully conducted and attempted to conduct a financial transaction in and affecting interstate commerce, to wit, the issuance of check number 9175, drawn on an account of Cost Containment, Inc. (CCI), number 053101121 at Branch Bank and Trust Company, Garner, North Carolina, made payable to Branch Bank and Trust Company in down payment for the purchase of a building at 1305 Bells Mill Road, Chesapeake, Virginia, in the approximate amount of $25,783.39, which, in fact, involved the proceeds of a specified unlawful activity punishable under the laws of the United States, to wit, mail fraud, in violation of Title 18, United States Code, Section 1341, with the intent to promote the carrying on of specified unlawful activity, all in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

COUNT TWENTY-SEVEN

On or about September 24, 1996, in the Eastern District of North Carolina, the defendant, DONALD MORRISON, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate commerce, in criminally derived property that was of a value greater than $10,000, that is, the issuance of check number 9175, drawn on an account of Cost Containment Inc., number 053101121, at Branch Bank and Trust Company, Garner, North Carolina, made payable to Branch Bank and Trust Company in down payment for the purchase of a building at 1305 Bells Mill Road, Chesapeake, Virginia, in the approximate amount of $107,000, such property having been derived from specified unlawful activity, to wit, mail fraud, in violation of Title 18, United States Code, Section 1341, all in violation of Title 18, United States Code, Section 1957(a).

COUNT TWENTY-EIGHT

In committing the offense in Count Twenty-Six of this Indictment, the defendant, DONALD MORRISON, shall forfeit to the United States any and all property any and all property, real and personal, involved in such offenses, and any and all property traceable to such property, including but not limited to the following:

1. REAL PROPERTY

One tract of property with all appurtenances, attachments and improvements thereon located in Chesapeake, Virginia, being more particularly described in Book 3405, Page 818 of the Chesapeake County Registry, more commonly known as 1305 Bells Mill Road, Chesapeake, Virginia, being titled in the name of Cost Containment, Inc.

2. SUBSTITUTE ASSETS

If any of the property described above as being subject to forfeiture as a result of any act or omission of the defendant:

1. cannot be located upon the exercise of due diligence,
2. has been transferred or sold to, or deposited with, a third person,

3. has been placed beyond the jurisdiction of the Court,

4. has been substantially diminished in value, or

5. has been commingled with other property that cannot be subdivided without difficulty,

it is the intention of the United States, pursuant to Title 18, United States Code, Section 982, to seek forfeiture of any other property of said defendant up to the value of the said forfeiture property listed above as being subject to forfeiture.

By virtue of the commission of one or, more of the felony offenses charged in this Indictment by the defendant, any and all interest that such defendant has in the above described property is vested in the United States and hereby forfeited to the United States pursuant to Title 18, United States Code, Section 982.

A TRUE BILL

/s/ Unreadable
FOREMAN

DATE: 3-19-02

/s/ John Stuart Bruce
JOHN STUART BRUCE
United States Attorney

APPENDIX B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT
OF NORTH CAROLINA
RALEIGH DIVISION

COST CONTAINMENT, INC., Plaintiff, vs. LEWIS-CHESTER ASSOCIATES, INC., and ROBERT KOLAR, Defendants.	CASE NO. 99-01939-5-ATS Chapter 11 ADVERSARY PROCEEDING NO. S-00-00109-5-AP

NOTICE OF MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT

NOTICE IS HEREBY GIVEN that Gerald A. Jeutter, Jr., Chapter 11 Trustee for Cost Containment, Inc. has filed a Motion for Approval of Compromise and Settlement with Defendants Lewis Chester Associates, Inc. and Robert Kolar as set forth below:

Adversary Proceeding No. 00-00109	Proposed Settlement Amount
Cost Containment, Inc. vs. Lewis Chester Associates, Inc., and Robert Kolar	$25,000.00

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed if no response and request for a hearing is made by the Debtor, creditors, or other parties in interest, in writing, within twenty (20) days from the date of this Notice. A written response or other pleading should be timely filed with the Clerk, United States Bankruptcy Court, Post Office Box 1441, Raleigh, North Carolina 27602, and a copy served on the undersigned at the address listed below; and

FURTHER NOTICE IS HEREBY GIVEN that if a response and a request for hearing is filed, a hearing will be conducted on the Motion at a date, time and place to be later set by this Court, and all interested parties will be notified accordingly. If no response is timely filed, the Court may rule on the Motion *ex parte* without further notice; and

FURTHER NOTICE IS HEREBY GIVEN that copies of the Motion are available upon written request to the undersigned.

DATE OF NOTICE: May 24, 2001

/s/ Unreadable
Gerald A. Jeutter, Jr.
Chapter 11 Trustee
North Carolina State
Bar No. 17724
Post Office Box 300004
Raleigh, North Carolina 27622
Telephone: 919-420-1700

* * *

8300 REVIEW OF FNS-150 FROM COUPON ISSUERS

> On a monthly basis, each coupon issuer shall submit to the county agency an FNS-250 Food Coupon Accountability Report with back-up documentation as appropriate. The county agency shall review each FNS-250 for completeness, accuracy, and reasonableness. The county agency shall attest to the accuracy of these reports and submit the original, copy 1 and copy 2 and all accompanying documentation to the Bureau of Food Stamps by the 20th day following the end of the report month. See Section 7330. Any requested revisions of 250 reports shall also be sent directly to the Bureau of Food Stamps which will forward revised copies to FNS.

* * *

The local agency shall be responsible for creating the issuance authorizations used by the Contractor to prepare and/or issue allotments. The local agency shall also be responsible for reconciling certain authorizations for non-participation.

The local agency shall be responsible for ensuring the Contractor timely, accurately, and appropriately complies with all applicable regulations, policies and procedures in the preparation and issuance of allotments. (7 CFR 274.1(c)).

Although the local agency may contract or delegate food coupon issuance responsibilities to others, the local agency shall remain fully responsible, despite any contract to the contrary, for ensuring that all required actions are carried out according to policy as specified in the Issuance Procedures Manual. In addition, the local agency is strictly liable for all shortages and/or losses of coupons, including those caused by a contract agent. (7 CFR 274.1(b))

Cortes #344

U.S. DEPARTMENT OF AGRICULTURE Food and Nutrition Service **ADVICE OF TRANSFER** (FOOD COUPONS) FNS HANDBOOK 301	**SENDING OFFICE**	**RECEIVING OFFICE**
	PROJECT CODE 9 digit code	PROJECT CODE 9 digit code
	NAME AND ADDRESS	NAME AND ADDRESS

INSTRUCTIONS

SENDING OFFICE:

Complete all items except "date of receipt" and signature of authorized receiving official retain copy 4 and forward remaining copies to receiving office. DO NOT REMOVE CARBON PAPER.

RECEIVING OFFICE:

Complete date and signature and forward copies as indicated below.

NO. OF CARTONS	NUMBER OF BOOKS	BOOK VALUE	TOTAL VALUE OF COUPONS TRANSFERRED
		$ 2.00	
		7.00	
		10.00	
		40.00	
		50.00	
		65.00	

DATE OF TRANSFER	SIGNATURE OF AUTHORIZED TRANSFERRING OFFICIAL	DATE OF RECEIPT	SIGNATURE OF AUTHORIZED RECEIVING OFFICIAL

FORM FNS-300 (2-90) Previous editions obsolete.

ORIGINAL After receipt and verification of the above described shipment. RECEIVING OFFICE will attach this original to the ORIGINAL of Form FNS-250 "Food Coupon Accountability Report" OR Form FNS-250-1 "Food Coupon Book Report," whichever is applicable.

$52600

2024(b) transfer

Title 7. Agriculture
Chapter 51. Food Stamp Program
7 U.S.C.A. § 2024. Violations and enforcement

(a) Coupon redemption

Notwithstanding any other provision of this chapter, the Secretary may provide for the issuance or presentment for redemption of coupons to such person or persons, and at such times and in such manner, as the Secretary deems necessary or appropriate to protect the interests of the United States or to ensure enforcement of the provisions of this chapter or the regulations issued pursuant to this chapter.

(b) Unauthorized use, TRANSFER, acquisition, alteration, or possession of coupons or authorization cards; restitution by convicted individuals

* * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA WESTERN DIVISION
NO. 5:01-276-2-BO3

UNITED STATES OF)
AMERICA)
) November 19, 2002
v.)
DONALD MORRISON)

VOLUME I OF V

TRANSCRIPT OF FIRST DAY OF JURY TRIAL BEFORE THE HONORABLE DAVID A. FABER, UNITED STATES DISTRICT JUDGE, AND A JURY IN RALEIGH, NORTH CAROLINA

APPEARANCES:

FOR THE GOVERNMENT:

DAVID J. CORTES
Assistant U.S. Attorney
U.S. Courthouse, Suite 800
310 New Bern Avenue
Raleigh, North Carolina 27601

FOR THE DEFENDANT:

VAUGHAN S. WINBORNE, JR., ESQ.
P. O. Box 1636
Raleigh, North Carolina 27602

COURT REPORTER:

Teresa L. Anderson, RDR, CRR

aren't they?

A. Our office is located in Atlanta, Georgia that serves the southeast states, so our rolled up 250 was sent to Atlanta.

Q. When you said rolled up 250, what do you mean by that?

A. That means that each project code's 250 was sent to our state office, and then all the information from all one hundred counties on their issuance was compiled together and then we reported our information as a state to FNS in Atlanta.

MR. CORTES: Okay. No further questions. Thank you, Your Honor.

THE COURT: All right. You may cross-examine.

MR. WINBORNE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WINBORNE:

Q. So CCI did not have a project code?

A. CCI DID NOT HAVE AN INDIVIDUAL PROJECT CODE OF ITS OWN, NO.

Q. And are you aware that in Virginia where CCI operated they did have a project code?

MR. CORTES: Objection. Relevance.

THE COURT: Overruled. You may inquire.

BY MR. WINBORNE:

Q. Are you aware that they did have a project code in Virginia?

A. No.

Q. Do you know why they didn't have one here?

* * *

[73] ROBERT C. WAGNER, JR.

ANYTHING?

A. YES, I DID.

Q. OKAY. AND WHAT IS THAT?

A. I PLED GUILTY TO POSSESSION AND TRANSFER OF FOOD STAMPS.

Q. OKAY. NOW, WAS THAT ONE OF THE COUNTS IN THE INDICTMENT?

A. YES, I BELIEVE SO.

Q. OR WAS IT IN A CRIMINAL INFORMATION?`

A. WHAT IS A CRIMINAL INFORMATION?

Q. THAT WOULD BE A SUBSEQUENT DOCUMENT THAT YOU WOULD HAVE PLED GUILTY TO; IT'S LIKE AN INDICTMENT BUT NOT.

A. I'M NOT SURE WHAT MY ATTORNEY HAD ME SIGN BUT, I MEAN, I HAD ONE COUNT OF POSSESSION AND TRANSFER OF FOOD STAMPS. I DID NOT PLEAD GUILTY TO THE ENTIRE INDICTMENT, WHICH WAS 30-SOME COUNTS.

Q. IT INCLUDED INSURANCE, CORRECT?

A. YES, IT DID.

Q. AS A MATTER OF FACT, IT WAS PRETTY MUCH THE SAME AS WHAT MR. MORRISON HAS?

A. MR. MORRISON HAD A FEW MORE BUT, YES, IT WAS ALMOST EXACTLY THE SAME.

Q. AND YOU DIDN'T PLEAD GUILTY TO ANY OF THE INSURANCE, DID YOU?

A. NO, SIR.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA WESTERN DIVISION
NO. 5:08-CV-00508 – FL

DONALD L. MORRISON Plaintiff, v. UNITED STATES OF AMERICA Defendant	)	SUPPLEMENTAL INFORMATION TO DENY CERTIFICATION AND SUBSTITUTION BASED ON EVIDENCE OF FRAUD AND THEFT BY WAYNE R. MYERS

Wayne R. Myers convinced Robert C. Wagner, Jr. and Tammy Bagley that they had violated Federal Regulations by moving food stamps from one CCI location to another without using USDA form FNS-300. Wayne R. Myers convinced both that they were guilty to the extent that both plea-bargained for a lighter sentence and agreed to testify for the prosecution. (See transcript, page 73 & 7 USCA #2024.)

Attached is form FNS-300. An examination of the document shows that it is used to transfer the accountability and responsibility for the possession of food stamps from one authorized official to another with both being required to have a project code. This form is not a permission slip to move food stamps. Both Bagley and Wagner moved food stamps from Raleigh to the county issuance sites, between sites and back to Raleigh in support of over-the-counter (OTC) contracts with the counties. At no time did the accountability and responsibility of the food stamps leave Cost Containment, Inc. (CCI). Clearly, Myers framed both CCI employees. (Chief Justice Boyles released Tammy Bagley from her plea-bargain.)

Attached is page 5 of my pre-sentence report. Item 23. Shows how Wagner was charged. Item 3., Cost Containment, Inc. was forced to pay a $52,600 fine due to the admission of guilt by both Wagner and Bagley. The lawyers' fee was $5,000 for a total damage against CCI of $57,600 due to the fraud of Myers' false interpretation of the use of the FNS – 300 form.

CCI is a sub-chapter S Corporation. All profits flow to the stockholders. I owned after the death of my wife 44% of the outstanding stock. The total of $57,600 represented profits of the company of which was taken by the Court of which $25,344 belong to me. That is the amount of money Myers or the U.S. Government should reimburse me.

Respectfully submitted,

BY: ______________________
Donald L. Morrison, pro se

[Certificate of Service Omitted In Printing]

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

V.

DON LESLIE MORRISON

JUDGMENT IN A CRIMINAL CASE

(Filed Dec. 5, 2007)

Case Number: 5:01-CR-276-2FA & 5:06-CR-92-1FA

USM Number: 19948-056

Pro Se with standby counsel – George B. Currin
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) ____________

☐ pleaded nolo contendere to count(s) ____________ which was accepted by the court.

☑ was found guilty on counts(s) Cts. 1-25: #5:01-CR-276-2FA and Ct. 1 (Indictment): #5:06-CR-92-1FA after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC §371	Conspiracy to Defraud the United States	3/19/2002	1

18 U.S.C. §1001 & 2	Making Materially False Statements and Aiding and Abetting	2/10/1997	2
18 U.S.C. §1001 & 2	Making Materially False Statements and Aiding and Abetting	2/10/1997	3
18 U.S.C. §1001 & 2	Making Materially False Statements and Aiding and Abetting	2/10/1997	4

The defendant is sentenced as provided pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)____

☑ Count(s) All remaining Cts. orig & sup. ☐ is ☑ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Sentencing Location: Raleigh, North Carolina	12/5/2007 Date of Imposition of Judgment
	/s/ David A. Faber Signature of Judge
	David A. Faber, United States District Judge Name and Title of Judge
	12/13/2007 Date

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	2/10/1997	5
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	2/10/1997	6
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	2/10/1997	7

18 USC §101 & 2	Making Materially False Statements; aiding/abetting	2/10/1997	8
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	2/10/1997	9
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	6/2/1998	11
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	6/2/1998	12
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	6/2/1998	13
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	6/2/1998	14
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	6/2/1998	15
18 USC §101 & 2	Making Materially False Statements; aiding/abetting	6/2/1998	16

18 USC §1341 & 2	Mail fraud and aiding/abetting same	8/25/1997	17
18 USC §1341 & 2	Mail fraud and aiding/abetting same	3/31/1997	18
18 USC §1341 & 2	Mail fraud and aiding/abetting same	11/14/1997	19
18 USC §1341 & 2	Mail fraud and aiding/abetting same	5/21/1998	20
18 USC §1341 & 2	Mail fraud and aiding/abetting same	12/11/1997	21
18 USC §1341 & 2	Mail fraud and aiding/abetting same	3/31/1997	22
18 USC §1341 & 2	Mail fraud and aiding/abetting same	6/13/1999	23
7 U.S.C. §2024(b), 18 U.S.C. §2	Use, transfer, acquire and possess food stamps in an unauthorized manner and aiding/abetting same	6/30/1998	24

18 U.S.C. §§ 641, 2	Conversion of government property and aiding/abetting same	6/30/1998	25
18 U.S.C. §§ 3146(a)(1) and (b)	Failure to appear	12/14/2005	1 of 5:06cr92

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Cts. 1-25 (5:01-CR-276-2FA): 21 Months on each count to run concurrently with each other. Ct. 1 (Indictment) - 5:06-CR-92-1FA: 6 Months to run consecutively to Cts. 1-25 in case #5:01-CR-276-2FA for a total of (27) Months.

☑ The court makes the following recommendations to the Bureau of Prisons:

The court recommends the defendant serve the remainder of his sentence at the Wake County Jail, Raleigh, North Carolina.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ________ ☐ a.m. ☐ p.m. on __________.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before p.m. on ______________________.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on ________ to __________
a _________, with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By ________________________
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

two years on each count of conviction, terms to be served concurrently

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☑ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

☑ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check if applicable.)

☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable).

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer.
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five (5) days of each month.
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4. The defendant shall support his or her dependents and meet other family responsibilities.
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use distribute, or administer any controlled substance or

any paraphernalia related to any controlled substance, except as prescribed by a physician.

8. The defendant shall not frequent places where controlled substances are illegally sold, used distributed, or administered, or other places specified by the court.

9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10. The defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

For a total of two (2) years supervised release concurrently as to all counts (1-25 and Indictment in 5:06cr92).

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally possess a controlled substance.

2. The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises.

3. The defendant shall not possess a firearm or destructive device as defined in 18 U.S.C. s 921.

4. The defendant shall cooperate in the collection of his financial obligations, as directed by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$2,600.00	$50,000.00	$26,988.00

☐ The determination of restitution is deferred until ___. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☑ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	**Total Loss***	**Restitution Ordered**	**Priority or Percentage**
Hartford Insurance Company	$26,988.00	$26,988.00	100%
TOTALS	$26,988.00	$26,988.00	

☐ Restitution amount ordered pursuant to plea agreement $_______________

☑ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, for offenses committed on or after September 13, 1994 but before April 23, 1996.

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☑ Lump sum payment of $ 79,588.00 due immediately, balance due

☐ not later than ______________ , or

☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D or, ☐ F below); or

C ☐ Payment in equal ________ (e.g., weekly, monthly, quarterly) installments of $ ________ over a period of _________ (e.g., months or years), to commence __________ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal ________ (e.g., weekly, monthly, quarterly) installments of $ _______ over a period of ________ (e.g., months or years), to commence ________ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within ________ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

If the defendant is unable to pay in full immediately, any balance still owed at the time of release shall be paid in installments of $1000.00 per month to begin 60 days after the defendant's release from prison. At the time of defendant's release, the probation officer shall take into account the defendant's ability to pay and shall notify the court of any needed modification of the payment schedule.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4025 (L)
(5:0-cr-00276-FA-2)

UNITED STATES OF AMERICA,

Plaintiff – Appellee

v.

DONALD MORRISON,

Defendant – Appellant

No. 08-4027
(5:06-cr-00092-FA-1)

COMPLAINT AND PETITION FOR REHEARING

This complaint and petition for rehearing is based on a material fact that was overlooked in the affirmation of the decision of the District Court:

The Appellate affirmation was clearly based on the submission of a document to the Court by my assistant counsel George Currin. He was not my co-counsel as indicated in the ruling. This separate presentation by Mr. Currin did not have Appellant's signature of approval. Appellant's decision to fire Currin and become pro se was based on the exact material that he presented to the Court. The accounting Currin used for paid claims for mail issuance, which left $26,988 for site claims was incorrect and also a ruse. (See enclosed.) This is the amount that was used to convict Appellant of mail fraud. This figure is not only incorrect it is also unsuitable accounting for sentencing:

1. Appellant was charged with a mail fraud count before trial in the amount of $39,000. (See enclosed.)

2. Appellant supplied appropriate information to the Court confirming that the $39,000 Centurion loss was caused by a theft at the Norfolk, VA site. This site loss was paid under the Hartford site policy 13 SBA ER2409. (See enclosed documents.)

3. This payment of $38,750 ($250 deductible) proved the worth of the site policy. (See chart submitted by Wayne R. Myers showing site loss under item 4., Norfolk.) Mr. Currin included this proof of valid site insurance in his documentation to the Court on 12/5/07 but obscured its value by including the $38,750 claim paid as a mail loss. Otherwise, this proof that CCI/Centurion had valid insurance for both site and mail at all times defeats the Justice Department's case of mail fraud. The true amount of site losses is the total of $26,988 + 38,750 = $65,738 . . . all covered and paid by Hartford.

4. Hartford did not cancel this site policy despite many Virginia site losses during the insured years 1995-96. Claims were paid CCI into 1998 after Plaintiff cancelled all the Hartford insurance on or about January/February 1997. Hartford did not reject a single county/city claim for site or mail in the almost four year process.

Hartford did not make a single complaint to the Court regarding mail fraud.

5. The Government never introduced as evidence a single site loss claim from any NC county.

The Government failed at the Grand Jury hearing, at trial, at sentencing and now at the Appellate level to contact the NC Food Stamp Accounting office to determine the amount of site loss claims against CCI by county customers. Rather than find the truth, the Government chose to convict the Appellant on the hearsay evidence of prosecutors David Cortes and Dennis Duffy who relied on information supplied by the USDA investigator Wayne R. Myers.

At sentencing, the Appellant did not approve by signature the accounting submission by George Currin. He was not paid to represent the Appellant at sentencing. The Appellate Court assumed that Curren's document was correct and that the Appellant approved his submission. The Appellate Court assumed that Appellant used the NC site losses for $26,988 for mail fraud despite the documents presented proving there were no site claims in NC to be used for mail fraud. The Appellate Court ruled on assumption and not fact.

Summation: The Justice Department assumed legal position during trial and sentencing was that the Hartford site policy was "worthless". This has been proven incorrect by documentation of the largest Hartford payment of a site loss under the site policy 13 SBA ER2409. The Justice Department legal position that the $26,988 was for all uninsured site losses in North Carolina has also been proven to be false by documentation of the $38,750 site payment for Norfolk VA and the USDA chart, which lists no NC sites. All site losses occurred at Centurion Virginia sites during 1995-96 and were all paid by Hartford without complaint. The enclosed documents again prove that the check for $4,200 was not for a site loss in Robeson County.

The check for $4,200 was for a tolerance level mail loss as proven by documents. Please review the enclosed government exhibit 18-2A for $4,200 while applying the rules of evidence. This check was the only piece of physical evidence of mail fraud provided by the prosecutor at trial during November 2002 and on December 5, 2007 to the Court at sentencing:

1. The reference for payment is for "Contents less deductible". What is the Contents amount and what is the monetary value of the deductible? Does the term contents represent valuables, cash or food stamps? Did a theft or a series of thefts cause the insured loss?
2. What is the name of the county/city that presented the claim against CCI? What State is involved? What court jurisdiction is involved.
3. Where does it indicate on that check that the claim was for either a site loss or a mail loss?
4. The check clearly states that the policy involved in the payment is CQ 1035, which covers CCI mail losses and theft of vault thefts and transit. What was the insured loss?

5. Who was the court investigator or Hartford employee that claims that this check was for a site loss instead of a mail loss?

6. The prosecutor that relied on the submission of this check to the Court can not represent the investigator in Court because he has no personal knowledge concerning the check. Who claims that the law allows the prosecutor to testify in place of the investigator that submitted the evidence?

7. What law allows the prosecutor to testify for Myers?

8. Why wasn't Myers asked by the prosecutor to testify at trial and at sentencing since Myers was ordered to attend to both events?

Without answers to the forgoing questions the check itself is only proof that Hartford approved a claim presented by a third party and paid CCI. This is in proper order since CCI insurance had an indemnity policy to protect CCI from claims of food stamps losses by outside parties. The prosecutor's use of this check as evidence and proof of Appellant's crime violates the rules of due process and all rules of evidence. Thus, the decision of the Court to pass sentence using an incorrect value of $26,988 as the total of mail fraud was based solely on this $4,200 check of worthless evidential value, which was listed on the enclosed chart item 2) 8-19-96. The Defendant moves for acquittal or dropping of all charges based on gross legal neglect in allowing the prosecutor to testify in place of the investigator who presented the check as evidence to the Court. As the result of the prosecutor not calling Wayne R. Myers to the stand to make his case, the Defendant was not allowed to face his accuser. This is a violation of Appellant's civil rights.

The Appellant challenges whether the Appellate Court supports the legal position that the Appellant is innocent until proven guilty. This is the Government's case against the Appellant:

> "The Appellant had many sites in NC that had losses of $26,988. Lacking proper insurance, Appellant used a scheme to process the site losses as mail losses and sent them to the Hartford Ins. Co. by mail for payment committing mail fraud. The check for $4,200 was proof that a site claim was paid as a mail loss."

The Appellant's defense is as follows:

Centurion Courier and CCI purchased policy 13 SBA ER2409 from Hartford to protect both firms from claims arising from the county/city customers for site operation losses. The only site claims occurred in Virginia since the Centurion sites in NC were not audited by the State Food Stamp accounting until the close of operations on June 30, 1999. The final NC audit showed that CCI was owed $5,291 for over payment of claims. No county site claims were presented to Hartford for Centurion operations since no county had a need to do so since CCI paid for any losses out of pocket.

Until the Government produces a single site claim from a North Carolina county that was sent for processing as a mail loss by the broker Lewis Chester & Associates and paid for by the Hartford, the Justice Department must withdraw all charges against Appellant due to lack of evidence of mail fraud.

The Appellant moves to ask for acquittal based on the fact that there is no documented evidence by the Government that mail fraud ever occurred or was associated with the Appellant, CCI or any of its officers at any time.

Respectfully submitted for the Fourth District Appellate Court consideration,

/s/ Donald L. Morrison
Donald L. Morrison, pro se

[Certificate Of Service Omitted In Printing]

February 9, 2008

Dear Mr. Currin:

Twice, I told you not to separate the mail losses from the site losses because you would get me convicted of mail fraud. Your sentence memorandum accomplished what you set out to do . . . convict me. You could have added that the $29,988 was for site losses from Centurion Courier operations in Virginia, which was outside the venue of the Raleigh district court. You could have even added that there were no site claims in North Carolina since that state did not make audits during the time of CCI's insurance with Hartford. As it was, Duffy went on and on about site claims that were proven mail losses. You said nothing about his wrongful statements. In the meantime, no restitution hearing occurred.

Wake County Jail released me on January 7th and showed me that the release was ordered on a card, but they gave me no documents of release. I would like to have a copy of the request you sent to the Bureau of Prisons to have me released prior to Christmas. I was told the "papers were lost".

We have a contract for you to represent me at sentencing and appeal. That is no longer possible. Please return my money paid to you for that contract. You worked for the court and not for me. I'm sure they paid you well.

Regards,

Donald L. Morrison, pro se

File

Don Morrison

To: Georgecurrin@aol.com
Subject: RE: Dove v. Morrison v. U.S., et. al

use the following information for your affidavit:

As co-counsel to Donald L. Morrison at sentencing on December 5, 2007, I am familiar with his case and the documents in his possession. His sentence was based on one count of mail fraud.

The Prosecutor provided information to the Court that Cost Containment, Inc (CCI) had several over-the-counter sites in North Carolina that had losses. One site loss claim for $4,200 was turned into the Hartford Insurance Company as a mail loss and was paid by the CQ 1035 policy for mail losses. The Prosecutor stated that this payment was proof of mail fraud.

I have viewed documents presented to me by Defendant Morrison that proves that the legal position by the Prosecutor is incorrect for the following reasons:

(1) CCI sent in all county claims to its broker Lewis Chester & Associates (LCA) for processing. No claims were made directly to the Hartford.

(2) A Robeson County mail loss claim for $9,200 was sent into LCA and a deductible of $5,000 was applied resulting in a Hartford payment of $4,200.

(3) President Parke S. Wagner conducted a CCI/ county audits on 6/30/98. The site losses amounted to $43,795 and was promptly paid by CCI.

(4) The State audited CCI on 6/30/99 and found that CCI had overpaid its losses by $5,291. No site claims were filed by any North Carolina counties.

Therefore, it is my considered legal opinion that Defendant Morrison was innocent of any mail fraud charges.

– Original Message –
From: Georgecurrin@aol.com [mailto:Georgecurrin@aol.com]
Sent: Monday, July 20, 2009 12:25 PM
To: dmorrison34@nc.rr.com
Subject: Re: Dove v. Morrison v. US, et. al

Don: if you will recall, i met with you at length at the Wake County jail and went over word by word my sentencing memorandum and you said you were very pleased and gave me the go ahead to file it. in any event, my sentencing arguments never were a concession of guilt and your real case on appeal had to do with your innocence, which in turn would obliterate any sentencing. i am willing to look at an affidavit and potentially sign it, if i believe it is correct. send it to me so i can look at it. GBC

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Nos.: 5:01-CR-276-2FA
5:06-CR-92-1FA

UNITED STATES OF AMERICA)
)
v.) **AFFIDAVIT OF GEORGE B. CURRIN**
)
DONALD MORRISON)
Defendant.)

GEORGE BULLOCK CURRIN, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law by and in good standing with the North Carolina State Bar.

2. That I was standby counsel for Defendant at sentencing on December 5, 2007 in the above-entitled action.

3. That I am familiar with the Defendant's case and have reviewed various documents in connection with Defendant's case.

4. Based on my review of Mr. Morrison's case involving mail fraud and other alleged offenses, it appeared to me that the Government's attorney at that time and the investigating agent may not have fully understood the process by which claims for loss were submitted and the manner in which food stamps were delivered in certain

counties in North Carolina; i.e., by either mail, over the counter or both, and that the Government's apparent inadequate knowledge of the methods by which such food stamps were delivered at certain locations may have contributed to Mr. Morrison being criminally charged for certain conduct of which he may have been not guilty.

AFFIANT FURTHER SAYETH NOT.

This the 7th day of August, 2009.

/s/ G.B.C.
George B. Currin
Post Office Box 86
Raleigh, North Carolina 27602
Telephone: 919 832-1515
Facsimile: 919 836-8484

STATE OF NORTH CAROLINA
WAKE COUNTY

I, Lara K. Murphy, a Notary Public, do hereby certify that GEORGE B. CURRIN personally appeared before me this day and I have personal knowledge of the identity of the principle and acknowledged to me that he voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated.

Witness my hand and official seal, this 7th day of August, 2009.

Lara K. Murphy
Printed/Typed Name of Notary

/s/ Lara K. Murphy
Signature of Notary Public

My Commission Expires: 03-26-14

[SEAL]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	**SUMMONS IN A CRIMINAL CASE**
v.	CASE NUMBER: 5:01CR276-3BO3
SEALED DEFENDANT	

(Name and Address of Defendant)

YOU ARE HEREBY SUMMONED to appear before the United States District Court at the place, date and time set forth below.

Room	Place
Courtroom – 6th Floor	Terry Sanford Federal Bldg. 310 New Bern Ave. Raleigh, N.C.

Wednesday, 12/12/01 at 10:00 AM
Date and Time

Before:

U.S. Magistrate Judge William A. Webb

To answer a(n)

XX SEALED INDICTMENT ___ Complaint

___ Information ___ Violation Notice ___ Violation Petition

Charging you with a violation of Title *See Below* United States Code, Section(s) ____________

* * *

AO 110 (Rev. 12/89) Subpoena to Testify Before Grand Jury

United States District Court

DISTRICT OF

EASTERN NORTH CAROLINA

TO:

Donald L. Morrison
Cost Containment, Inc.
3305-C Durham Drive
Raleigh, NC 27603

SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☐ PERSON

☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	COURTROOM
Terry Sanford Federal Building 310 New Bern Avenue Raleigh, NC	Grand Jury Room
	DATE AND TIME
	11/19/01 9:00am

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

> Please provide all original documents relating to the $39,000.00 claim for loss at Norfolk, Virginia, including all documents signed by B. Greene and Grennan.

---

* If not applicable, enter "none"

IN LIEU OF APPEARING BEFORE THE GRAND JURY, YOU MAY PROVIDE THE REQUESTED DOCUMENTS VIA FEDEX TO SPECIAL AGENT WAYNE MYERS, UNITED STATES DEPARTMENT OF AGRICULTURE, 4407 BLAND ROAD, ROOM 110, RALEIGH, NC, 27609, (919) 790-2810, WHO WILL PRESENT THEM TO THE GRAND JURY FOR YOU.

☐ *Please see additional information on reverse*

/s/ Jamie Brice

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK DAVID W. DANIEL, Clerk	DATE
(BY) DEPUTY CLERK /s/ Teri Carpenter	October 25, 2001

This subpoena is issued on application of the United States of America UNITED STATES ATTORNEY Ref. 1998R00367	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY DAVID J. CORTES, AUSA 310 New Bern Avenue, Suite 800 Raleigh, NC 27601-146 Telephone: (919) 856-4530

LEWIS-CHESTER

associates, inc.

INSURANCE

November 4, 1996

Mr. Donald Morrison
Chairman of the Board
Cost Containment, Inc.
3305 C Durham Drive
Raleigh, North Carolina
27602

Dear Mr. Morrison:

Re: Property Damage Claim
D/L – 10/4/96
Bond No. 13SBAER2409

We sent ITT/Hartford Insurance Group, which underwrites your employee dishonesty coverages, a report of the potential loss involving food stamps. This incident was under investigation in Norfolk, Virginia. "Hartford" has elected to handle this matter in their Home Offices, and they sent you a confirmation letter, dated 10/29/96. They are asking for details.

It was not clear if you would have a claim when we last spoke, but crime claims are a little less lenient than, say, an auto loss. If you are not entirely sure if this will result in a claim, and the investigation continues, please call the claims examiner to let them know. More importantly, they will need to verbally extend the time in which you are required to submit a

Proof of Loss. They may also not need all the information requested in their letter, at least at this time. Let them advise you on that aspect as well. If they want it now, you will need to complete the Proof of Loss claiming the highest estimate of what you believe the loss may be.

Let us know if we can help in any way.

119 Summit Avenue, Summitt, New Jersey 07901-2898 • Phone: 908.273.6100 • Fax: 908.273.0192
URL: http://www.legroup.com • eMail: insure@lcgroup.com

Sincerely,

/s/ [Illegible]
E. Bernard McGlynn, Jr.
Director – Claims & Surety Services
EBM/
Encl.

09 This **Spectrum Policy** consists of the Declarations, Coverage Forms, Common Policy Conditions and any
24 other Forms and Endorsements issued to be a part of the Policy. This insurance is provided by the insurance
ER company of ITT Hartford Insurance Group shown below.
SBA

INSURER: HARTFORD FIRE INSURANCE COMPANY
HARTFORD PLAZA, HARTFORD, CONNECTICUT 06115

COMPANY CODE: 1

Policy Number: 13 SBA ER2409

SPECTRUM POLICY DECLARATIONS
ORIGINAL [LOGO]
ITT HARTFORD

Named Insured and Mailing Address:
(No., Street, Town, State, Zip Code)

COST CONTAINMENT INC
SEE FORM IH 12 00
3305C DURHAM DR P O BOX 1661
RALEIGH NC 27602

Policy Period:

From 01/01/96 **To** 01/01/97 1 YEAR
12:01 a.m., Standard time at your mailing address shown above. **Exception:** 12 noon in Maine, Michigan, New Hampshire, North Carolina.

Name of Agent/Broker:

LEWIS CHESTER ASSOCIATES INC

Code: 655922

Previous Policy Number: 13 SBA EI9403

Named Insured is: CORPORATION

Audit Period: NON-AUDITABLE

Type of Property Coverage: SPECIAL

Insurance Provided: In return for the payment of the premium and subject to all of the terms of this policy, we agree with you to provide insurance as stated in this policy.

TOTAL ANNUAL PREMIUM IS: $5,599

Countersigned by /s/ [Illegible] **Date** 1/26/96

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

Location: 001 **Building:** 001

3305 C DURHAM DR P O BOX 1661
RALEIGH NC 27602

Description of Business:

OFFICES – GENERAL

Deductible: $ 250 PER OCCURRENCE

BUILDING AND BUSINESS PERSONAL PROPERTY	LIMITS OF INSURANCE
BUILDING	
	NOT APPLICABLE

BUSINESS PERSONAL PROPERTY	
REPLACEMENT COST	$ 32,000
PERSONAL PROPERTY OF OTHERS	
REPLACEMENT COST	$ 2,000
MONEY AND SECURITIES	
INSIDE THE PREMISES	$ 10,000
OUTSIDE THE PREMISES	$ 2,000

Form SS 00 02 11 93 T Printed in U.S.A. (NS)
Process Date: 01/16/96

Policy Expiration Date: 01/01/97

* * *

[LOGO] **COST CONTAINMENT, INC.**
SERVICES FOR SOCIAL SERVICES

3305 C Durham Drive
Raleigh, N.C. 27603

Donald L. Morrison
Board Chairman

Telephone (919) 779-7161

November 7, 1996

ITT Hartford
Hartford Plaza
Hartford Ct. 06115
(860) 547-5000

Re: Norfolk food stamp loss

Dear Sirs,

Food stamps are transported daily to various sites in the City of Norfolk from our central storage point. At the end of each day, the surplus is picked up and returned to the vault. There is an extensive system of checks and balances involving several employees to verify the amounts when food stamps exchange possession. Part of that system is to have a City Manager collect the ending inventory from the sites.

At the close of business on October 2, 1996, a situation developed at the Park Place site which delayed the City Manager, Dottie Walker, from her last scheduled pick up time of the day at the Little Creek Site. A CCI employee, Michelle Bryant, who is responsible for verifying behind cashiers at the Little Creek site, was left alone with a security guard from American International, to watch the food stamps. Ms. Bryant moved the food stamps to the Park Place

Site overlooking a case of *$65.00* books which is valued at *$39,000.00*, and left it at the issuance site. Ms. Walker discovered the possibility of loss the next morning when comparing the Cashier C/D paperwork to the ending inventories. At that point, she called the Little Creek center to look for the case of food stamps and it was no longer there.

A series of procedural infractions were committed. Firstly, the cashiers were not to leave the Little Creek site before the City Manager arrives and verifies the inventories. Ms. Bryant is not authorized to transport food stamps without a City Manager accompaniment. Ms. Bryant also neglected to include the paperwork with the transfer and Ms. Walker did not inspect the delivery when it arrived at the Park Place location.

The employees at this site are well known by CCI. All employees who had worked at the site that day were willingly polygraphed by Franklin Security. In addition, the City Managers, Dottie and Tonya Walker, the American International security and the Little Creek security were tested as well. All have passed. The only individuals who have not been tested and for certain entered the site after closing were the custodians. The custodians are employed by Systems Management, Inc.; a cleaning contractor for the City of Norfolk. The two individuals who cleaned that evening were Thelma Clark and David Haney. They have refused to be polygraphed. Their supervisor is Carl Henderson and he can be reached at (757) 853-1796. A copy of the polygraph results are enclosed.

The following persons were polygraph tested and passed:

City Managers:

Dottie Walker Tonya Walker

Tellers: – count out food stamps to recipients.

A/B	C/D	E
Sandra Field	Delores Pretlow	Daniele Alexander
Katie Hines	Theresa Cooper	

Cashiers: – manage the inventory on site and count out food stamps for tellers to issue to recipients.

A/B	C/D	E
Ernestine Langley	Patra Freeman	None

Pullers: – locate authorization cards as recipients present identification.

Michelle Bryant	Carolyn Williams	Michael Washington

Guards:

Alphonso Ellis – American International
Keith Williams – City of Norfolk

Accounting has been verified back to the beginning of the month. The United States Department of Agriculture requires monthly reports to confirm issuance versus authorizations. We began at the beginning of the month and verified all transactions since the end of the previous month. We then continued by comparing to the figures maintained by the City Department of Social Services who maintain duplicate books to corroborate our figures. Food stamp accounting is reported as number of books of each denomination.

A police report was filed in Norfolk. Detective Northern, who can be reached at (757) 664-7018, was assigned to the case but has since been passed along to the Department of Agriculture. For more information you may contact Joe Justice, Fraud Division, at (804) 287-1710. I am in the process of obtaining official reports from him as well. CCI will contact you as information is obtained.

Included are copies of inventory records, issuance records, the FNS-250, which is the federal report of food stamp issuance, a report of the incident by Dottie Walker, the results of the polygraph testing, the police report and W-4 of all of the CCI employees.

I have tried to provide all the material CCI has gathered up to this point and to meet the criteria you have requested in your letter. One exception though is the claim form you enclosed. This loss was not the result of employee infidelity but rather should be applied to our transit policy. Please send any required forms and I will complete and return them quickly.

Please contact me immediately if I may be of assistance. This is the first loss CCI has ever had of this type or amount. The process of making such a claim is foreign to us. Your assistance is appreciated.

Sincerely,

/s/ P.S. Wagner
P.S. Wagner
Vice President

cc: Kownack, Norfolk Dept. of Social Services
Joe Justice, U.S.D.A.

[LOGO]
ITT HARTFORD

October 29, 1996

Hartford Plaza
Hartford, CT 06115
Telephone (860) 547-5000

Cost Containment, Inc.
3305C Durham Drive
Raleigh, North Carolina 27603

RE: Bond No: 13 SBA ER2409
Obligee: Cost Containment, Inc.
Date of Loss: 10/4/96

Gentlemen:

Receipt of your claim notice dated October 14, 1996 is acknowledged. In response to your claim notice, enclosed is a Proof of Loss form that should be completed in its entirety and returned to Hartford. In addition to the Proof of Loss, we request that you include the following, if applicable.

1. Detailed narrative description of the loss.
2. Date of discovery of the loss.
3. Explanation of how the loss was discovered.
4. Copy of any accounting analysis prepared.
5. Personnel file of any employee involved.
6. Position description for each employee involved.
7. Proof of employment for each employee involved during the period of the alleged loss such as the W-2 Form.

8. Home address and phone number of each employee involved.
9. Copy of any communication between the insured and employee including any demands for reimbursement and any responses thereto.
10. Proof of insurance coverage that was in effect prior to Hartford's policy if the alleged loss occurred prior to the Hartford's coverage.
11. Any other documentation that will help substantiate this claim.

All documentation submitted will be made available for review to any alleged wrongdoers.

Please be aware that the bond or policy contains certain time limitations concerning the discovery of loss, filing of the Proof of Loss, and the institution of legal proceedings against Hartford. We encourage you to read the entire bond or policy carefully. Additionally, costs, fees or other expenses you incur in establishing either the existence or the amount of loss are specifically excluded under the policy.

Please also advise whether this matter has been reported to the police for the purposes of initiating a criminal action and, if so, please provide us with a copy of any police report and the status of any criminal investigation.

Yours very truly,
HARTFORD FIRE INSURANCE COMPANY

Marie Gesualdi
Fidelity and Surety Claim Department
Enclosure

✓ CC: Lewis-Chester Associates, Inc.

ITT Hartford Group, Inc.
Hartford Plaza, Hartford,
Connecticut 06115

[LOGO] Insurors
LEWIS-CHESTER
ASSOCIATES, INC.
119 SUMMIT AVENUE • SUMMIT, NJ 07901-2898
(908) 273-6100 FAX (908) 273-0192

DATE September 8, 1997

SUBJECT Property Damage Claim
D/L – 10/4/96
Claim no. 693IM87613

TO Mr. Donald L. Morrison, President
Cost Containment, Inc.
3305 C Durham Drive
Raleigh, North Carolina 27603

"Hartford," which previously released $38,750.00 for a theft of food stamps, has now released an additional $31,012.00 in this matter. This is a total payment to date of $69,762.00.

/s/ E. Bernard McGlynn, Jr.
E. Bernard McGlynn, Jr.
Director – Claims & Surety Services
Encl.

SIGNED

EXHIBIT 4

The Hartford Policy: December 16, 1994 - March 1, 1997
"Mail Issuance Policy" - Insured CCI
Claim payments totaled $121,172.50 between August 19, 1996 - January 16, 1998
(14) Checks were deposited into CCI's bank account

Insured's Scheduled Locations:
Raleigh, NC
Keysville, VA
Grovesport, OH

1) Claim# 6931M85827 (2nd Qtr. 95 – $2,127)
Payment Check: $2,127 on 3-11-97

Proof of Loss signed
by Donald Morrison
Chesapeake/Norfolk/Arlington

2) Claim# 6931M73972 (7-1-95 – $12,112.50)
Payment Checks: $4,200.00 on 8-19-96
$7,770.50 on 3-11-97
$142.00 on 7-10-97
Proof of loss signed
by Donald Morrison
Chesapeake/Norfolk

3) Claim# 6931M85205 (10-1-95 – $11,619)
Payment Checks: $10,358.50 on 3-11-97
$1,260.50 on 1-16-98

Proof of loss signed
by Donald Morrison
Chesapeake/Norfolk

4) Claim# 6931M87613 (4-28-97 – $78,426)
Payment Checks: $38,750 on 6-12-97
$31,012 on 9-3-97
$598 on 12-23-97
$8,066 on 1-16-98

Norfolk (Little Creek)

5) Claim# 6931M90158 (7-1-96 – $15,458)
Payment Checks: $13,661 on 7-15-97
$1,797 on 11-10-97

Norfolk

6) Claim# 6931M90226 (1-1-97 – $1,430)
Payment Checks: $832 on 8-8-97
$598 on 1-16-98

Norfolk

---

7) Claim# 6931M90154 (1-1-95 – $1,614)
Used for Deductible
No Payment Made to CCI

Norfolk

8) Claim# 6931M76128 (3-1-96 – $255)
Used for Deductible
No Payment Made to CCI

Norfolk

9) Claim# 6931M90157 (4-1-96 – $984)
Used for Deductible
No Payment Made to CCI

Norfolk

[Stamp Omitted In Printing]

[SEAL]

North Carolina Department of Human Resources
Division of Social Services

325 North Salisbury Street •
Raleigh, North Carolina 27603
Courier # 56-20-25

James B. Hunt, Jr.,
Governor
C. Robin Britt, Sr.,
Secretary

Kevin M. Fitzgerald,
Director
(919) 733-3055

January 12, 1996

Proof of Loss

Mr. Russell M. Sessoms, Director
Robeson County Department of Social Services
Lumberton, North Carolina 28359

Dear Mr. Sessoms:

Based on the Revised July 1995 – September 1995 FNS-259 report submitted by Robeson County, we have recalculated the value of mail issuance losses that exceeded the current tolerance level of 0.5 percent. The liability for this quarter as reported on the Mail Issuance Loss report, FNS-259 is shown below:

Total Quarterly Mail Issuance	Tolerance Rate	Tolerance Amount	Actual Replacements	County Liability
$ 3,583,059	5%	$ 17,915	$ 27,116	$ 9,200

If any of the actual replacements shown above have since been returned, please notify Stan Chesson at (919) 733-4640. If we have not received any notification by January 16, 1996, we will deduct the county liability shown above from your Federal USDA reimbursement for County Administration (December 1995 service) paid January 1996.

Thank you for your cooperation in this matter.

Sincerely,
/s/ Jim Knight
Jim Knight, Chief
Federal Grants Management
and County Accounting Section

JK/WSC/jm
cc: FSO & IMP.

[LOGO] **COST CONTAINMENT, INC.**
SERVICES FOR SOCIAL SERVICES

3305 C Durham Drive
Raleigh, N.C. 27603

Donald L. Morrison
Board Chairman

Telephone (919) 779-7161

April 15, 1996

Lewis Chester Associates, Inc.
Attention: Mr. E. Bernard McGlynn, Jr.
119 Summit Avenue
Summit, New Jersey 07901-2898

Re: Mail Issuance Claim .5% Rule

Dear Mr. McGlynn,

Enclosed is an insurance loss claim for the County of Robeson, N.C. in the amount of $9200.00 for the July-September 1995 quarter. However, in order to meet our $5000.00 deductible for this quarter, we have already paid the following:

Lincoln, NC – $361.00
Charlottesville, Va – $688.00

These two claims total $1049.00 plus this Robeson, NC loss for $9200.00 meets our deductible and leaves $5249.00 for the insurance to take care of.

If this is not correct, please contact me.

Please submit this claim for payment. If additional information is required please contact this office.

Sincerely,

/s/ Tammy T. Bagley
Tammy T. Bagley
Records Manager

Enclosure:

cc: file

Exhibit 18-1	Correspondence from CCI requesting claim payment	pg 192
✓ Exhibit 18-2A	[No] Check for claim 73972 [4200 – Count 27]	pg 193
✓ Exhibit 18-2C	[No] Check for claim 73972 [142.00]	pg 194
Exhibit 18-4	Proof of loss	pg 195
Exhibit 19-1	Correspondence from CCI requesting payment	pg 195
Exhibit 19-2A	[No] Check for claim 85205	pg 196
Exhibit 19-2B	[No] Check for claim 85205	pg 197
Exhibit 19-4	Proof of loss for claim 85205	pg 197
Exhibit 20-1A	Claim form from CCI requesting payment for 87613	pg 197
Exhibit 20-2A	[No] Check for claim 87613	pg 198
Exhibit 20-2C	[No] Check for claim 87613	pg 199
Exhibit 20-2D	[No] Check for claim 87613	pg 199
Exhibit 21-1	Letter for Donald Morrison to Hartford	pg 199
Exhibit 21-2A	[No] Claim number 90226	pg 200

Exhibit 22-1	[No] Letter from CCI requesting claim payment	pg 200
Exhibit 22-2	[No] Check for claim 85827	pg 201
✓ Exhibit 22-3	Proof of loss for claim 85827 [2127.00]	pg 202
Exhibit 13-1	Letter from Don	pg 210
Exhibit 13-3	Letter to by [sic] Morrison	pg 211

Hartford payment

[Illegible]			[Illegible]			[Illegible]
[Illegible]	IM	73972	COST CONTAINMENT, INC.			
[Illegible]			[Illegible]	[Illegible]	[?]	
[Illegible]	[Illegible]	CQ1035	COST CONTAINMENT, INC.	47277289	3	
[Illegible] [Illegible]	[Illegible] [Illegible]	[?] 117	[Illegible] CONTENTS LOSS LESS DEDUCTIBLE	[Illegible] 47271209	[?] 3	
[Illegible] [Illegible]	[?] LAF	[Illegible]	[Illegible] 070195	[Illegible] LEWIS CHESTER ASSOC. SUMMIT N.		[LOGO] **ITT HARTFORD**

[Illegible]
FOUR THOUSAND TWO HUNDRED AND NO/100 **DOLLARS** $*****4,200.00

[Illegible]

[Illegible]
COST CONTAINMENT INC
PO BOX 1661
RALEIGH NC 27602

/s/ Maxine C. Bassinger

[Illegible] CAROLINA COMM. LINES

[Financial Account Number Omitted]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NORTH CAROLINA WESTERN DIVISION
NO. 5:01-276-2-BO3

UNITED STATES OF AMERICA	)	
	)	November 19, 2002
v.	)	
DONALD MORRISON	)	

VOLUME I OF V

TRANSCRIPT OF FIRST DAY OF JURY TRIAL BEFORE THE HONORABLE DAVID A. FABER, UNITED STATES DISTRICT JUDGE, AND A JURY IN RALEIGH, NORTH CAROLINA

APPEARANCES:

FOR THE GOVERNMENT:

DAVID J. CORTES
Assistant U.S. Attorney
U.S. Courthouse, Suite 800
310 New Bern Avenue
Raleigh, North Carolina 27601

FOR THE DEFENDANT:

VAUGHAN S. WINBORNE, JR., ESQ.
P. O. Box 1636
Raleigh, North Carolina 27602

COURT REPORTER:

Teresa L. Anderson, RDR, CRR

[90] also before that, this was done by CCI ù Containment, Inc. It was ratified by their board. Just because Mr. Morrison signed it, the board is shown to have been an independent board. The company is independent from Mr. Morrison, and if the board wants to spend money, wherever it came from, Mr. Morrison should not be held liable for the board's actions. Now, Mr. Morrison was present at the board meetings, but as has been shown by Mr. Monroe's testimony, Mr. Morrison did not hold any hypnotic or Svengalish hold over the board and compel them to do anything. It was an independent action done purely for business reasons, not for laundering money.

Further, Mr. Morrison contends ù and I think has shown ù that, in his mind, the insurance proceeds were not ill-gotten and therefore were not subject to money laundering.

THE COURT: Well, was there any evidence in the case to specifically tie the insurance proceeds to the purchase of that property?

MR. CORTES: Yes, Your Honor.

THE COURT: There was?

MR. CORTES: Yes, Your Honor.

THE COURT: Remind me what that was.

MR. CORTES: The insurance proceeds of $4,200 were deposited to the very same bank account from which the cheek which bought the house came out of.

THE COURT: Well, how close in time?

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:08-CV-00508 – FL

DONALD L. MORRISON, Plaintiff, v. UNITED STATES OF AMERICA, Defendant	)	SUPPLEMENTAL INFORMATION OFFERED TO DENY CERTIFICATION AND SUBSTITUTION BASED ON EVIDENCE OF FRAUD AND THEFT BY WAYNE R. MYERS (Filed Feb. 18, 2009)

Counts TWO-SIXTEEN of the indictment CR-276 (Exhibit A, COUNT FIVE) consisted of fifteen FSN-250 reports, which were described to be criminally incorrect by the U.S. Government. No one in the Federal, State or County government was placed on the witness stand to state that any single report was wrong and why it was wrong. Wayne R. Myers was the investigator that gave the fifteen reports to the prosecutor. He did not testify either. However, I stipulate that all fifteen FSN-250 were wrong and I will explain why they were wrong.

Enclosed is a sample of work performed each month by Cost Containment, Inc. (CCI). (See Exhibit B.) CCI completes this report to line 19. The total listed there is the correct balance of the inventory for the county after the authorized issuance is deducted for the month according to the States SLEM73I-01 report. (See Exhibit C*.) The county is responsible for listing on Line 22 the issuance according to the documents. (See Exhibit D*.) CCI supplies a daily and monthly Cashiers Daily Reconciliation Report (C.D.R.R.) to be used for Line 22 according to the direction of the State.

One of the counties used in the indictment was Gaston County. Court documents N 00121 & N 00122 are the closing month reports completed by CCI. I noted what the County should have done with the information on their FSN-250 report. Government numbered 000370 shows what they did. Thus, it is apparent that Gaston County certified the report without using the CDRR for Line 22. That is why no losses were reported. Exhibit E shows that Gaston County corrected their June 1998 FNS-250 report. All the remaining counties listed in the indictment CR-276 did the same. There was no loss of any kind to the various government entities.

Governments Exhibit 11, I-3 show that Wayne Myers was informed in detail by New Hanover County that the fifteen counts in the indictment were incorrect due to the counties not following State instructions in using the CCI monthly CDRR on Line 22. Exhibit 2A, 8300 holds each county solely accountable for their errors in submitting incomplete or inaccurate FNS-250 reports.

No one in CCI was responsible for any errors on any county FNS-250 report. Wayne Myers knew this and the prosecutor relied on his expert information as an investigator employed by USDA and went ahead with my prosecution. This action by him cost me $30,000 in lawyers' fees and a $50,000 fine at sentencing for a total of $80,000, for which the U.S. Government or Myers should now reimburse me. Obviously, there is a major default of fifteen false charges in the Governments' case, which now should result in the termination of the indictment and its outcome according to the law handed down in the case of Brady v. Maryland.

BY: /s/ Donald L. Morrison
Donald L. Morrison, pro se

[Certificate Of Service Omitted In Printing]

U.S. DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE

FOOD COUPON ACCOUNTABILITY REPORT

Submit this report within 45 calendar days after the first day of coupon issuance each month, but in any event it should be mailed to reach the Food and Nutrition Service by the 15th day of the second month following the last day of coupon issuance for the month.

See detailed INSTRUCTIONS on reverse.

1. PROJECT CODE 37-071-005A

2. REPORT FOR: MONTH 05 YEAR 98

3. REORDER NOTIFICATION (*see instructions on reverse*) ☐

Page 1 of 1 Pages

4. NAME AND ADDRESS OF REPORTING OFFICE
GASTON
c/o CCI 308 B Sherwee Dr
Raleigh, N.C. 27603

☒ COUPON ISSUER ☒ BULK STORAGE POINT

5. PROJECT NAME AND LOCATION GASTON

6. TYPE OF REPORT
☐ INITIAL SUBMISSION ☐ RESUBMISSION OF THE REJECTED REPORT ☒ REVISED REPORT (*Complete Item 7*)

7. *REVISED REPORTS ONLY.* INDICATE AREA(S) OF CORRECTION AND GIVE NUMBER OF REVISED REPORTS SUBMITTED FOR REPORTING MONTH
☐ 1 - COUPON BOOK INVENTORY SUMMARY
☐ 2 - TRANSFER SUMMARY
☐ 3 - ACTUAL VS. DOCUMENTED ISSUANCE

REVISED REPORT NUMBER

I – COUPON BOOK INVENTORY SUMMARY

	NUMBER OF BOOKS					
	$2.00	$7.00	$10.00	$40.00	$50.00	$65.00
8. Beginning Inventory (*Line 15 of previous 250*)	6690	4182	1902	9700	7044	11519
9. Shipments received from FNS (USDA)	6000	10000	2000	4000	3200	15000
10. Returned to inventory (*Coupon user only*)	11	24	17	5	5	16
11. Total transferred in [*from item 18(a)*]	2000	0	0	0	0	0
12. Total transferred out [*from item 18(b)*]	0	0	0	0	0	0
13. Credits to (*See instructions*)	0	0	0	0	0	0
14. Total available [(8 = 9 + 10 + 11) minus (12 + 13)]	14/06	14206	3919	13705	10249	26535
15. Ending inventory (*Actual physical count*)	11001	6547	2205	10410	8704	15217
16. Inventory difference	3705	7659	1714	3295	1545	11318
BOOK VALUE	x $2.00	x $7.00	x $10.00	x 40.00	x $50.00	x 65.00
17. Value of coupon book difference	$ 7410 00	$ 53613 00	$ 17140 00	$ 131800 00	$ 77250 00	$ 735670 00

II – TRANSFER SUMMARY

18. "x" one		PROJECT CODE	NUMBER OF BOOKS					
IN FROM (A)	OUT TO (B)		$2.00	$7.00	$10.00	$40.00	$50.00	$65.00
X		[illegible]-119-0104	2000	0	0	0	0	0

III – ACTUAL VS. DOCUMENTED ISSUANCE SUMMARY (coupon issuer only)

ACTUAL ISSUANCE		
19.	Total value of coupon books issued (*Totals from item 17*)	$ 1022883 00
20.	Value of mail issuance replacements	$ 00
21.	Net value of coupons issued (*Total of line 19 minus line 20*) [CDRR]	$ 00
DOCUMENTED ISSUANCE		
22.	Total value of coupons issued based on documents (*ATP or HIR cards*)	$ 00
23.	Total value of issuance difference (*Total of line 21 minus line 22*)	

IV – CERTIFICATION

I CERTIFY, under penalty of law, that (1) all items are accurate and true to the best of my knowledge; (2) this report accurately reflects issuance activity for the month, (3) the number of books reported as "Ending Inventory" was determined by actual physical count, in accordance with FNS instructions

DATE	SIGNATURE AND TITLE OF REPORTING OFFICE OFFICIAL

I CERTIFY, that this report accurately represents coupon issuance for the report month.

DATE	SIGNATURE AND TITLE OF STATE AGENCY OFFICIAL

REMARKS

CCI completes form to line 19 only County must complete lines 20-23 using CDRR

THIS REPORT IS REQUIRED BY LAW (PL[ILLEGIBLE]-113) FAILURE TO REPORT CAN RESULT IN A FINE OF NOT MORE THAN $1,000 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH

Gaston County]

	$2.00	$7.00	$10.00	$40.00	$50.00	$65.00
3. Begining inventory	11,011	6,551	2,199	10,414	8,729	15,5__
9. Shipments from FNS	0	0	0	0	0	__
10. Returned to inventory	11	24	17	5	5	__
11. Total transferred in	0	0	0	0	0	__
12. Total transferred out	0	0	0	0	0	__
13. Credits to	0	0	0	0	0	__
14. Total available	11,022	6,575	2,216	10,419	8,734	15,55__
15. Ending inventory	11,022	6,550	2,210	10,412	8,729	15,54__
16. Inventory difference	20	25	6	7	5	1__
17. Value of difference	40	175	60	280	250	65__

I. TRANSFER SUMMARY

In from	Out to	Project Code	$2.00	$7.00	$10.00	$40.00	$50.00	$65.00

[CCI's system for reporting losses "in house"]

N00121 [Court document]

OCUMENTED ISSUANCE SUMMARY

1. Net value of coupons issued	1,455.00			
Value mailed	0.00			
Total number of issuances today	18	OTC	#	$
Total number mailed	1	Mass	4	485.00
		Dly	13	970.00
		Exp	0	0.00

* REMOTE INVENTORY

	$2.00	$7.00	$10.00	$40.00	$50.00	$65.00
Beg	15731	17103	4377	11833	9884	27424
End	15711	17078	4371	11826	9879	27414
Dif	20	25	6	7	5	10

Value: $ 1,455 # Site: 17

** MONTH TO DATE ISSUANCE TOTALS

	$2.00	$7.00	$10.00	$40.00	$50.00	$65.00
Site	8918	6304	930	2931	1277	10419
Vlt	786	1352	779	362	243	574
Tot	3704	7656	1709	3293	1520	10993

Value issued : $ 1,000,355 [Line 22] # Iss. : 5,677
VALUE MAIL : $ 82,766 # MAIL : 1,324
VALUE SITE : $ 917,589 # SITE : 4,353
FC : 1,322 # Certs: 2 # OTC : 4,353

Postage: $581.22

Reg/Cert to Co : $ 0.00 1st Class to Co: $ 28.97

CERT	#	$
Mass	0	0.00
Dly	0	0.00
Exp	0	0.00

FC	#	$
Mass	0	0.00
Dly	0	0.00
Exp	1	0.00

* POSTAGE INVOICE DETAIL *

M	$ 0.00	Co	$ 2.62
D	$ 0.00	Reg	$ 0.00
E	$ 0.32		

Daily Total $ 2.94

1st ½ Cur. mo : $ 547.16

Postage Invoice : $ 34.06

[PROOF: County was to use CDRR]

FOOD STAMP PROGRAM PROCEDURES

* * *

- [★ County Requirement] The contractor then completes the FNS-250 through line 21 and mails it to the local DSS. The DSS reviews their copy of the mail issuance log total and adjust that total for such items as cancellations prior to issuing. The county then records on Line 22 (Total value of coupons issued based on documents). The county then subtracts line 22 from line 21 to determine if there has been an over-issuance of coupons.

* * *

- The Food Stamp accounting unit uses the SLEM731-01 to verify the initial authorizations for a given month. However, because FSIS can not be updated by the counties to account for changes to the initial authorizations recorded in FSIS, the State must depend upon the counties to account for changes to the original authorizations and record those changes on Line 22 (Total Value of coupons issued based on documents. [DRR]
- The Food Stamp Accounting Unit has the responsibility to process all FNS-259 (Mail Issuance Reports). USDA-FNS regulations provides that Food Stamp Coupons can be issued through a Direct Mail Issuance System that does not require an interim authorization document from the recipient. In other words the authorizations for eligible recipients is produced on the

mail issuance logs and provided to issuance points. County Departments of Social Services are the project area level for reporting all mail issuance activity for the county level. Counties are responsible for preparing the FNS-259 reports that shows all mail issuance activity. The FNS-259 shows the value of all food stamps issued through the mail and the net value of all replacements made for coupon allotments lost in the mail. As cited in Federal Regulations, USDA is financially responsible for up to .5% of the value of all coupons replaced in a given quarter. Replacements above the .5% tolerance level are billed to the State. The State, in turn holds the County responsible for exceeding the tolerance level. The counties that contract with Mail Issuance Contractors hold their contractor liable for exceeding the tolerance level. When USDA bills the State for exceeding the tolerance level, the State bills the counties who then bills the mail issuance contractors.

* * *

U.S. DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE

FOOD COUPON ACCOUNTABILITY REPORT

Submit this report within 45 calendar days after the first day of coupon issuance each month, but in any event it should be mailed to reach the Food and Nutrition Service by the 15th day of the second month following the last day of coupon issuance for the month.

See detailed INSTRUCTIONS on reverse.

1. PROJECT CODE 37-071-005A

2. REPORT FOR: MONTH 05 YEAR 98

3. REORDER NOTIFICATION (*see instructions on reverse*) ☐

Page 1 of 1 Pages

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GASTON
c/o CCI 308 B Sherwee Dr
Raleigh, N.C. 27603
☒ COUPON ISSUER ☒ BULK STORAGE POINT

5. PROJECT NAME AND LOCATION
GASTON

6. TYPE OF REPORT
☐ INITIAL SUBMISSION ☐ RESUBMISSION OF THE REJECTED REPORT ☒ REVISED REPORT (*Complete Item 7*)

7. *REVISED REPORTS ONLY.* INDICATE AREA(S) OF CORRECTION AND GIVE NUMBER OF REVISED REPORTS SUBMITTED FOR REPORTING MONTH
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11. Total transferred in [*from item 18(a)*]	2000	0	0	0	0	0
12. Total transferred out [*from item 18(b)*]	0	0	0	0	0	0
13. Credits to (*See instructions*)	0	0	0	0	0	0
14. Total available [(8 = 9 + 10 + 11) minus (12 + 13)]	14706	14206	3919	13705	10249	26535
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		[illegible]-119-0104	2000	0	0	0	0	0

III – ACTUAL VS. DOCUMENTED ISSUANCE SUMMARY (coupon issuer only)

ACTUAL ISSUANCE	
19. Total value of coupon books issued (*Totals from item 17*)	$ 1022883 00
20. Value of mail issuance replacements	$ DLM -0- 00
21. Net value of coupons issued (*Total of line 19 minus line 20*)	$ DLM 1,022,883 00
DOCUMENTED ISSUANCE	
22. Total value of coupons issued based on documents (*ATP or HIR cards*) CDRR/HIR	$ DLM 1,000,355 00
23. Total value of issuance difference (*Total of line 21 minus line 22*)	$ DLM 22,528 00

IV – CERTIFICATION

I CERTIFY, under penalty of law, that (1) all items are accurate and true to the best of my knowledge; (2) this report accurately reflects issuance activity for the month, (3) the number of books reported as "Ending Inventory" was determined by actual physical count, in accordance with FNS instructions

DATE	SIGNATURE AND TITLE OF REPORTING OFFICE OFFICIAL

I CERTIFY, that this report accurately represents coupon issuance for the report month.

DATE	SIGNATURE AND TITLE OF STATE AGENCY OFFICIAL

REMARKS

Note blocks 6 & 7. All errors can be corrected at anytime.

Note block 4. Bulk Storage by denominations.

NO 0122

[Court document]

THIS REPORT IS REQUIRED BY LAW (PL[ILLEGIBLE]-113) FAILURE TO REPORT CAN RESULT IN A FINE OF NOT MORE THAN $1,000 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH

U.S. DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE

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See detailed INSTRUCTIONS *on reverse.*

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37-071-005A

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Page 1 of 1 Pages

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GASTON
c/o CCI 308 B Sherwee Dr
Raleigh, N.C. 27603

☒ COUPON ISSUER ☒ BULK STORAGE POINT

5. PROJECT NAME AND LOCATION
GASTON

6. TYPE OF REPORT
☐ INITIAL SUBMISSION ☐ RESUBMISSION OF THE REJECTED REPORT ☒ REVISED REPORT (*Complete Item 7*)

7. *REVISED REPORTS ONLY.* INDICATE AREA(S) OF CORRECTION AND GIVE NUMBER OF REVISED REPORTS SUBMITTED FOR REPORTING MONTH

☐ 1 - COUPON BOOK INVENTORY SUMMARY
☐ 2 - TRANSFER SUMMARY
☐ 3 - ACTUAL VS. DOCUMENTED ISSUANCE

REVISED REPORT NUMBER ☐

I – COUPON BOOK INVENTORY SUMMARY

	NUMBER OF BOOKS					
	$2.00	$7.00	$10.00	$40.00	$50.00	$65.00
8. Beginning Inventory (*Line 15 of previous 250*)	6695	4182	1902	9700	7044	11519
9. Shipments received from FNS (USDA)	6000	10000	2000	4000	3200	15000
10. Returned to inventory (*Coupon user only*)	11	24	17	5	5	16
11. Total transferred in [*from item 18(a)*]	2000	0	0	0	0	0
12. Total transferred out [*from item 18(b)*]	0	0	0	0	0	0
13. Credits to (*See instructions*)	0	0	0	0	0	0
14. Total available [(8 = 9 + 10 + 11) minus (12 + 13)]	14706	14206	3919	13705	10249	26535
15. Ending inventory (*Actual physical count*)	11001	6547	2205	10410	8704	15217
16. Inventory difference	3705	7659	1714	3295	1545	11318
BOOK VALUE	x $2.00	x $7.00	x $10.00	x $40.00	x $50.00	x $65.00
17. Value of coupon book difference	$ 7410 00	$ 53613 00	$ 17140 00	$ 131800 00	$ 77250 00	$ 735670 00

II – TRANSFER SUMMARY

18. "x" one		PROJECT CODE	NUMBER OF BOOKS					
IN FROM (A)	OUT TO (B)		$2.00	$7.00	$10.00	$40.00	$50.00	$65.00
X		[illegible]-119-0104	2000	0	0	0	0	0

III – ACTUAL VS. DOCUMENTED ISSUANCE SUMMARY (coupon issuer only)

ACTUAL ISSUANCE		
19.	Total value of coupon books issued (*Totals from item 17*)	$ 1022883 00
20.	Value of mail issuance replacements	$ 373 00
21.	Net value of coupons issued (*Total of line 19 minus line 20*)	$ 1022510 00
DOCUMENTED ISSUANCE		
22.	Total value of coupons issued based on documents (*ATP or HIR cards*)	$ 0 00
23.	Total value of issuance difference (*Total of line 21 minus line 22*)	$ 1022510 00

IV – CERTIFICATION

I CERTIFY, under penalty of law, that (1) all items are accurate and true to the best of my knowledge; (2) this report accurately reflects issuance activity for the month, (3) the number of books reported as "Ending Inventory" was determined by actual physical count, in accordance with FNS instructions.

DATE	SIGNATURE AND TITLE OF REPORTING OFFICE OFFICIAL
7/28/98	[Illegible]

I CERTIFY, that this report accurately represents coupon issuance for the report month.

DATE	SIGNATURE AND TITLE OF STATE AGENCY OFFICIAL
7-31-98	Patsy L. Walker, I.M. Coordinator

REMARKS

I am sending a copy of CCI's "End of Month" report to show it does not match the figure in Item 19. I am also sending a copy of the first 250 report CCI sent to me that I could not use. This report completed is the second sent to me. I talked to Steve Wagner on 7-23-98 when I received the first report. Mr. Wagner said the figure reflected on first report pointed out a "shortage."

/s/ Patsy L. Walker
I.M. Coordinator 7-31-98

THIS REPORT IS REQUIRED BY LAW (PL[ILLEGIBLE]-113) FAILURE TO REPORT CAN RESULT IN A FINE OF NOT MORE THAN $1,000 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH

[SEAL]

North Carolina Department of Human Resources
Office of the Controller
616 Oberlin Road • Raleigh, North Carolina 27605
Courier # 56-20-01

James B. Hunt, Jr.,
Governor
H. David Bruton, M.D.,
Secretary

Joyce H. Johnson,
Controller
(919) 733-0169

January 8, 1999

Mr. John Blair, Director
Gaston County Department of Social Services
Gastonia, North Carolina 288053

Dear Mr. Blair:

On the basis of the FNS-250 reports submitted by your county for the period April through September 1998, we have calculated the amount due to the United States Department of Agriculture – Food and Nutrition Service as follows:

APRIL 1998	$ .00
MAY 1998	.00
JUNE 1998	22,155.00
JULY 1998	.00
AUGUST 1998	137.00
SEPTEMBER 1998	.00
TOTAL	$22,292.00

We will deduct the $22,292.00 shortage from the Federal USDA reimbursement for County Administration due your County for the month of January 1999.

Sincerely,

/s/ Joyce H. Johnson
Joyce H. Johnson
Controller

JHJ/WSC/mw
cc: County Finance Officer
IMR

[SEAL] **NEW HANOVER COUNTY**
DEPARTMENT OF
SOCIAL SERVICES
1650 GREENFIELD STREET
POST OFFICE DRAWER 1559
WILMINGTON, NORTH
CAROLINA 28402-1559
TELEPHONE (910) 341-4700
FAX (910) 341-4363

F. WAYNE MORRIS, ACSW
Director

USDA Department of Agriculture
Office of Inspector General
Investigations

Attention: Wayne R. Myers
Senior Special Agent

[Proof that government was informed about CCI's "in-house" system using CDRRs to show site shortages.]

August 5, 1998

Dear Agent Myers:

During my end-of-the-month reconciliation process on July 29, 1998, I discovered that the figures entered on line 19 of the June 1998 FNS-250 report (Attachment #1) did not agree with spreadsheet reports I keep. However, the entry on line 22 was the same as my figures. The result showed that New Hanover County was responsible for an overissuance of $12,251. Since I have no documentation to account for this issuance difference, I called CCI and spoke to Lisa. She explained that $2,251 was an accumulated total of cashier errors that had never been recorded on the CDRR's or the FNS-250's. She further explained that the $10,000 was a box (200) of $50 coupon books. At this point Steve Wagner came on the telephone line.

I asked Steve to explain what was going on. He said that when there is a shortage, they must assign it to a county. Since New Hanover County's records are "above reproach" and the county "balances every month," CCI decided to assign the $10,000 to us. I asked why we had not been notified in advance and he said that CCI didn't want to notify us because it might "impede the investigation." He stated that about a year ago, he told the state office that CCI's vault was short $10,000 and that the inventory had not been counted in a long time. He further stated that Stan Chesson said that CCI couldn't have an audit. Steve said that he (Steve) should have pursued it but did not.

He said that recently CCI has been the subject of some allegations and improprieties. Three staff members have resigned, including Jeff and Jenny Simpson. He said that the Postal Inspectors and Federal agents have investigated them to make sure CCI is not involved in any improprieties.

I asked how and why he assigned the loss to New Hanover County and why it couldn't be spread among all of CCI's 55 counties. He said that it was too complicated to do that and that most of the counties do not reconcile their records monthly. I asked that he provide me with a letter explaining the issuance difference as well as their rationale for assigning the loss to New Hanover County. He said he would provide it by the afternoon of July 30. Steve also said that New Hanover County would not "suffer" from this overissuance, that he had already given the state a check to cover the amount. He said that the state had not responded so he was unsure what they would do with the check. He said that if New Hanover County's reimbursement was affected, the county would be reimbursed immediately.

He also stated that I should receive an amended FNS-250 report and that there would not be an entry on line 22. He said that it was not in CCI's interest to provide the figure for that line; it was the responsibility of the county. The revised FNS-250 report was received in the mail of July 30 (Attachment #2).

I talked with Stan Chesson at the State Office about our liability in this situation and the legality of CCI burdening us with the 200 $50 book loss. Stan said that it was not illegal for this to happen due to CCI's set-up. He and I discussed how the FNS-250 reports are prepared by CCI and what action is taken by the counties in their reconciliation process. *During the conversation, I realized that, unless the county (that utilizes on-site issuance) reconciles the report and enters an "issuance difference" on line 23, there is no "difference" recorded at the state level. In other words, if the county simply subtracts the replacement value from line 19 and enters the same figure on lines 21* *and 22, there is no record of any overissuances or underissuances and no withholding of federal reimbursement.* [Error CDRR not used]

On August 2, 1998 I received correspondence from Steve Wagner regarding the issuance difference on our FNS-250 report. A copy of this is included as Attachment #3.

On August 5, 1998, Stan Chesson called to let me know that he needed to forward a copy of our FNS-250 to the federal investigators. Since the mathematical calculations from lines 22 and 22 do not jibe, he asked that I send a memorandum requesting a change to either line 22 or line 23. A copy of this memorandum is also included as Attachment #4.

Please let me know if you need any further information or if you have questions about the content of this letter.

Sincerely,

/s/ Martha H. Stein
Martha H. Stein
Food Stamps/Medicaid Chief

cc: F. Wayne Morris
Director

APPENDIX E

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4025

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DONALD MORRISON,

Defendant-Appellant.

No. 08-4027

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DONALD MORRISON,

Defendant-Appellant.

Appeals from the United States District Court for the Eastern District of North Carolina, at Raleigh. David A. Faber, Senior District Judge. (5:01-cr-00276-FA-2; 5:06-cr-00092-FA-1)

Submitted: April 29, 2009 Decided: June 18, 2009

Before MICHAEL and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Donald Morrison, Appellant Pro Se. Dennis M. Duffy, Anne Margaret Hayes, Assistant United States Attorneys, Joshua B. Royster, UNITED STATES DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Following a jury trial, Donald Morrison was convicted of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371 (2006); fifteen counts of making false statements and aiding and abetting, in violation of 18 U.S.C. §§ 1001, 2 (2006); seven counts of mail fraud and aiding and abetting, in violation of 18 U.S.C. §§ 1341, 2 (2006); using, transferring, acquiring, and possessing food stamps in an unauthorized manner and aiding and abetting, in violation of 7 U.S.C. § 2024(b) (2006) and 18 U.S.C. § 2; and conversion of food stamps, in violation of 18 U.S.C. §§ 641, 2 (2006). Morrison was conditionally released pending his sentencing hearing. Before sentencing, Morrison fled the jurisdiction, and thus failed to appear for his scheduled sentencing hearing on April 25, 2003. Morrison was not located and arrested until December 2005. He was indicted for failure to appear on April 5, 2006, and on March 27, 2007, a jury found Morrison guilty of knowingly failing to appear at his April 25, 2003 sentencing.

Morrison's fraud and failure to appear convictions were consolidated for sentencing. The district court sentenced Morrison to twenty-one months on each of the twenty-five counts of fraud, to be served concurrently and six months to be served consecutively for failing to appear. Morrison was ordered to pay a $50,000 fine, $26,988 in restitution, and a $2600 special assessment. He timely appealed, and proceeds pro se.

We have reviewed the following claims raised by Morrison in his informal brief: (1) various claims of prosecutorial misconduct, including the allegation that Morrison was denied discovery in his 2002 trial that was later provided in his 2006 failure to appear trial; (2) that Morrison was precluded from introducing a necessity defense at his failure to appear trial and that the indictment for that offense was inaccurate; (3) that false allegations were made about food stamp reporting requirements and additional claims of prosecutorial misconduct; (4) that Morrison faced false mail fraud charges; and (5) that the prosecutor made improper references to a "slush fund" of food stamps and to Title 7, Chapter 51 of the U.S.

Code. Upon careful review, we conclude that none of these claims are meritorious. We further note that Morrison cannot contest his civil forfeiture proceedings in this criminal appeal.

Morrison's challenges to his sentence for the most part amount to a denial of his guilt. His complaint that he was not afforded a restitution hearing is without merit. The district court, at sentencing, conducted a lengthy inquiry into the amount of loss and the appropriate amount of restitution. The court accepted documentary evidence from Morrison and a proffer of what his witnesses would have said. The defense persuaded the court to reduce the amount of loss and restitution to a fraction of that proposed in the presentence report, equal to the amount admitted by Morrison. After that reduction, Morrison and his standby counsel made no further objections. We conclude that the district court's restitution award is both procedurally and substantively reasonable. *See Gall v. United States*, 128 S. Ct. 586, 597 (2007).

Accordingly, we affirm Morrison's convictions and sentence. We grant Morrison's motion to file a supplemental pro se brief and have considered that brief in deciding this appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX F

FILED: July 28, 2009

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-4025(L)
(5:01-cr-00276-FA-2)
(5:01-cr-00092-FA-1)

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DONALD MORRISON,

Defendant-Appellant

ORDER

The Court denies the petition for rehearing.

Entered at the direction of the panel: Judge Michael, Judge Motz and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF NORTH CAROLINA
WESTERN DIVISION

Nos.: 5:01-CR-276-2FA
5:06-CR-92-1FA

UNITED STATES OF AMERICA	)	
v.	)	***DEFENDANT'S SENTENCING MEMORANDUM***
DONALD MORRISON Defendant.	)	

NOW COMES the Defendant, DONALD MORRISON, by and through undersigned standby counsel, and respectfully submits this Sentencing Memorandum for the Court's consideration in determining sentence in this case.

I. THE APPLICATION OF THE 2007 VERSION OF THE SENTENCING GUIDELINES WILL RESULT IN THE UNCONSTITUTIONAL APPLICATION OF AN EX POST FACTO LAW TO DEFENDANT. MOREOVER, THE GOVERNMENT'S ARGUMENT THAT THE CRIMES OF CONVICTION OCCURRED UP TO MARCH 2002 IS INCORRECT.

The probation office and the Government contend that the 2007 version of the Sentencing guidelines should be applied in this case. They base this contention on U.S.S.G. § 1B1.11(b)(3) which states that, "[i]f the defendant is convicted of two offenses, the first committed before and the second committed after, a revised edition of the Guideline Manual became effective, the revised edition of the Guidelines Manual is to be applied to both offenses." While the Government is correct that the language of that section is "plain," the real issue is whether the guideline directive to apply the revised guideline to both offenses can be implemented in this case without violating the Ex Post Facto Clause of the Constitution.

The Fourth Circuit Court of Appeals held in the case of *United States v. Lewis*, 235 F.3d 215 (4th Cir. 2000) that application of the revised guidelines to a case involving multiple continuous offenses of tax evasion, some of which occurred before the revision and some of which occurred after the revision, did not violate the Ex Post Facto clause. The Court in *Lewis* stated that, "[t]he central concern of the ex post facto prohibition is "the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated." *United States v. Lewis*, 235 F.3d at 217. The Court in *Lewis* went on to state, "Lewis therefore had ample warning, when she committed the later acts of tax evasion, that those acts would cause her sentence for the earlier crime to be determined in accordance with the Guidelines Manual applicable to the later offenses, and thus that the intervening amendment to the tax table would apply." *Lewis*, at 218.

Such "fair notice" cannot be said to exist in the case *sub judice*. The Federal Circuits that have held that U.S.S.G. § 1B1.11(b)(3) does not violate the Ex Post Facto Clause have all based such holding on a fact-based rationale not present in Defendant's case; to wit: "the grouping rules [of the Sentencing Guidelines] enacted in 1987, provide warning to criminals that completing another criminal offense similar to one committed previously places them in peril of sentencing under a revised version of the guidelines." *United States v. Vivit*, 214 F.3d 908, 919 (7th Cir. 2000); *United States v. Bailey*, 123 F.3d 1381, 1404-05 (11th Cir. 1997) (" . . . a defendant knows, when he continues to commit related crimes, that he risks sentencing for all of his offenses under the latest amended Sentencing Guidelines Manual"); *United States v. Kimler*, 167 F.3d 889, 893 (5th Cir. 1999) ("Where a sentencing court groups offenses committed before a change in the sentencing guidelines with offenses after the amendment, and then applies the amended guideline in determining a defendant's appropriate sentence, the Ex Post Facto Clause is not implicated."); *United States v. Vivit*, 214 F.3d 908, 919 (7th Cir. 2000) (holding that the guidelines "provide notice to criminals that engaging in ongoing fraudulent behavior involving the same type of harm risks grouping of convictions, which because of the one-book rule, will all be sentenced according to the Guidelines in effect where the latest conduct occurred."); *United States v. Sullivan*, 255 F.3d 1256, 1262-63 (10th Cir. 2001) (" . . . the grouping rules and the relevant conduct provisions gave [defendant] notice that his three consecutive failures to file would be considered part of the same course of conduct and would collectively determine his sentence.")

Unlike *Lewis*, and the other cases holding no ex post facto problem with application of U.S.S.G. § 1B1.11(b)(3), Defendant's case does not involve "grouping" of similar offenses; a pivotal point in those cases holding that U.S.S.G. § 1B1.11(b)(3) does not violate the Ex Post Facto Clause. The offense of failure to appear is not "grouped" with the fraud offenses, it is not "similar" to the fraud offenses, it is not part of the "same course of conduct" as the fraud offenses, and it is not a continuation of the fraud offenses after the revision of the guidelines. Defendant's case involves multiple offenses of fraud, *none* of which occurred after the revision to the guidelines, and a wholly unrelated offense of failure to appear which occurred after the revision of the guidelines for the fraud offenses. Under these facts, the application of U.S.S.G. § 1B1.11(b)(3) to Defendant's case would violate the Ex Post Facto Clause.

The Government's argument that the criminal conduct in this case continued up to the date of the indictment on March 19, 2002 is also incorrect. While it is true that the Second Superseding Indictment contains an allegation in boilerplate form that there was criminal conduct "continuing to the present," which was at that time March 19, 2002, it is undisputed that the alleged criminal conspiracy did *not* continue up to that time. It is further undisputed that there is no evidence (or even allegation in the indictment) of any criminal act being committed after 1998. It should also be noted on this point that when this case was originally set for sentencing in April 2003 and the U.S. Probation Office utilized the 1998 edition of the U.S. Sentencing Commission Guidelines Manual in preparing its presentence report, the Government had no objection to the 1998 version being used and made no argument that a later version of the guidelines should apply. (The Government's argument in this regard is without merit.)

Finally, the Government has not objected to the Probation office's statement in paragraph 28 on page 11 of the Revised Presentence Report that the Defendant's involvement in this offense concluded in December 1998. The 1998 version of the guidelines should be applied.

II. THE AMOUNT OF LOSS RECOMMENDED BY THE PROBATION OFFICE AND THE GOVERNMENT IS INCORRECT.

The Government contends and the jury found that Defendant committed mail fraud when CCI submitted insurance claims to Hartford for losses of food stamps under the mail-loss policy (IM-1035CQ), when such losses actually occurred at CCI's over-the-counter (OTC) issuance sites at Chesapeak, Norfolk and Arlington, Virginia; locations not covered by the

IM-1035CQ mail-loss policy. Exhibit 1; Government's Chart, attached to Government's Sentencing Memorandum as Exhibit 4.

As stated in undersigned counsel's Objections to Presentence Report, the Government's proposed method of calculating loss under a lost premium theory is erroneous. It is unclear as to why the Government has switched its method of calculating the loss, unless it is simply for the purpose of increasing the advisory guideline range. At the original sentencing hearing on April 25, 2003, the Government, by and through Assistant United States Attorney David Cortes, did not argue that the loss in this case should be calculated based on lost premiums and professed no difficulty in ascertaining the loss by calculating the amount of money Hartford paid to CCI.

The presentence report states in paragraph 26 on page 11 that CCI only paid $84,924.00 in insurance premiums to Hartford between December 16, 1994 and March 1, 1997. (The Defendant has indicated to undersigned counsel that this figure is incorrect and overstates the actual amount of premiums paid.) Yet, the presentence report states that Hartford now claims that the insurance premiums would have been $277,444.00 for this same time period had the OTC sites been disclosed. Based on the insurance coverage Hartford was providing to CCI, this assertion of lost premiums is not credible. The fact is that Hartford was not fully insuring CCI from 1994 to 1997. During 1995 and 1996, CCI had insurance with Jardines Insurance and Hartford, both underwritten by Lloyd's of London. Exhibit 3, p. 36. The Hartford policy covered losses only up to $125,000, with a $5,000.00 deductible per quarter.

The insurance coverage with Hartford was cancelled in the first quarter of 1997. Considering these facts, Hartford's claim that its premiums would have been $277,444.00 for this twenty-six (26) month period is not credible. As stated in the presentence report, Hartford only insured CCI from December 16, 1994 to March 1, 1997.

Of course, CCI would not have paid Hartford approximately $132,000.00 per year ($277,444.00 ÷ 26 months) for coverage of losses up to $125,000.00 with a $5,000.00 deductible. It appears Hartford may be seeking restitution for lost premiums based on an entirely different type of coverage than they were actually providing to CCI.

There was no monetary loss caused by the filing of the FNS-250 reports. Moreover, it is now clear that only a portion of the $121,172.50 paid by Hartford to CCI was related to over-the-counter (OTC) site losses, which were not covered by the mail-loss policy. The Government and the Probation office are aware of the fact that only a portion of the $121,172.50 paid by Hartford to CCI related to fraudulent claims. The Government is aware of this fact through the Investigative Report of Wayne Myers and the witness interviews therein. Moreover, the Probation office concedes this fact when it states in paragraph twenty-six (26) on page eleven (11) of the Revised

Presentence Report that "[t]he investigation established that many of the claimed losses occurred at sites where only over-the-counter services were available, thus making them ineligible for loss claims." "Many" is not all. Yet, rather than simply ascertain which of the claims were based on losses of food stamps at the OTC sites at Norfolk, Chesapeake and Arlington, (the only claims which the Government has ever asserted were fraudulent), the Government asserts in its Sentencing Memorandum that the amount of loss is the entire $121,172.50 paid by Hartford to CCI. Alternatively, the Government asks the Court to apply a different method of calculating loss which will increase the advisory guidelines range. Undersigned counsel merely requests that the loss be calculated in the proper manner, even if such calculation results in a lower offense level for Defendant.

In applying the proper method of calculating the loss; that is, how much money did Hartford pay to CCI for fraudulent insurance claims, several important points must be made.

The total amount paid by Hartford to CCI was $121,172.50. The Government contends that this entire amount should be considered the amount of loss, in addition to the $10,000.00 claim made to Lloyd's of London. In support of this contention, the Government provides a chart which purports to contain $121,172.50 of fraudulent claims submitted by CCI to Hartford. The chart contains nine (9) claims totaling 121,172.50. The Government claims all nine (9) claims were actually OTC site losses occurring at Chesapeake, Norfolk or Arlington, Virginia, that were fraudulently submitted to Hartford as mail losses under the IM 1035 CQ mail-loss policy. The Government also states in its Sentencing Memorandum that the Defendant fraudulently obtained $121,172.50 in payments from Hartford. The Government's argument and its supporting chart are simple enough, but clearly erroneous, as revealed by Special Agent Wayne Myers' Investigative Report.

As to block three (3) of the Government's chart, the Government asserts that as to claim no. 693 IM 85205, CCI received two payments of $10,358.50 on March 11, 1997 and $1,260.50 on January 16, 1998 for fraudulent claims for losses occurring at the OTC sites in Norfolk and Chesapeake. This is incorrect. The fact is that the claim of loss submitted for the OTC site in Chesapeake was only $363.50 and the claim of loss submitted for the OTC site in Norfolk was only $1,428.00. See Exhibit 2; Letter and attached spreadsheet of claims to Hartford. The total amount claimed in 693 IM 85205 was $15,358.50. According to Agent Myers' report, $14,995.00 of that amount was a claim of loss for Robeson County, North Carolina, not an OTC site at Chesapeake, Norfolk or Arlington. Exhibit 3, p. 27, Report of Investigation by Special Agent Wayne Myers. Hartford applied the $5,000.00 deductible which resulted in a payment to CCI of $10,358.50. Only $1,791.50 was paid by

Hartford for claims relating to Norfolk and Chesapeake in 693 IM 85205.

As to block four (4) of the Government's chart, relating to claim no. 693 IM 87613, the Government asserts that a total of $78,426.00 was paid out by Hartford for fraudulent claims, based on CCI's submission of OTC site loss claims to Hartford for payment under the IM 1035 CQ mail-loss policy. The chart is misleading, erroneous and overstates the amount of loss. First of all, Agent Myers states in his investigative report that the claim in 693 IM 87613 was reported by CCI to Hartford under the business owner policy 13 SBA ER 2409 (BOP2409), *not* the IM 1035 CQ mail-loss policy. Thus, the Government's claim and the jury's finding that CCI fraudulently submitted an OTC site loss in 693 IM 87613 as a mail-loss under the IM 1035 CQ mail-loss policy are contrary to Agent Myers' findings in his report. See Exhibit 3, p. 31. The BOP 2409 policy was not a mail-loss policy and covered losses other than mail. This policy had a $250.00 deductible, whereas the IM 1035 CQ mail-loss policy had a $5,000.00 deductible. Moreover, the chart and Agent Meyers' report reveal that at least $38,750.00 of the total amount paid out by Hartford to CCI in claim 693 IM 87613 was not paid under the IM 1035 CQ mail loss policy at all. As Agent Myers' investigative report reveals, $39,000.00 of food stamps were missing from the Little Creek CCI OTC site in Norfolk, Virginia. As Agent Myers stated in his report, this claim 693 IM 87613 was submitted by CCI to Hartford for payment under the

BOP 2409 policy, not the 1035 CQ mail-loss policy. What neither the chart nor the Government states is that the entry on the chart showing a payment check in the amount of $38,750.00 is payment by Hartford under the BOP 2409 policy (not the 1035 CQ mail-loss policy) for the $39,000.00 loss of food stamps at the Little Creek (Norfolk) OTC site. The reason the check was made for $38,750.00 is because the BOP 2409 policy has a $250.00 deductible. Thus, $39,000.00 less $250.00 is $38,750.00. The Government's contention that Hartford paid $38,750.00 to CCI for fraudulent claims made under the IM 1035 CQ mail-loss policy is erroneous. This fact further rebuts the Government's claim and the claims of Hartford and Robert Kolar that the BOP 2409 policy did not cover OTC site losses in Norfolk. Moreover, it reveals that either Robert Kolar or Hartford made the decision to apply other OTC site losses to the 1035 CQ mail-loss policy; perhaps because the mail-loss policy had a $5,000.00 deductible. Robert Wagner, as part of his responsibilities as accountant for Centurion Courier, submitted claims for site losses to Robert Kolar's office to be applied to the BOP 2409 policy.

Additionally, none of the $31,012.00 paid by Hartford to CCI in claim 693 IM 87613 related to OTC site losses at Norfolk, Chesapeake or Arlington, Virginia; locations which had only OTC issuance and no mail issuance. Likewise, none of the $8,066.00 paid by Hartford to CCI in claim 693 IM 87613, as indicated in block four (4) of the Government's chart, related to OTC site losses at Norfolk, Chesapeake or

Arlington, Virginia. Rather, contrary to the chart, this claim was made solely for mail losses incurred by Hertford County, North Carolina. See Exhibit 2.

Of the $10,358.50 paid by Hartford to CCI in claim 693 IM 85205, as indicated in block three (3) of the Government's chart, only $1,791.50 related to OTC site losses at Norfolk, Chesapeake or Arlington, Virginia. See Exhibits 1 and 2.

Of the $4,200.00 and $7,770.50 paid by Hartford to CCI in claim 693 IM 73972, as indicated in block two (2) of the Government's chart, only $5,978.50 related to OTC site losses at Norfolk and Chesapeake, Virginia.

The $2,127.00 check paid by Hartford to CCI in claim 693 IM 85827, as indicated in block one (1) of the Government's chart represented the amount paid to CCI after application of the $5,000.00 deductible to a claim of $6,440.50. This payment appears to relate primarily to claims made as to OTC site losses at Norfolk, Chesapeake and Arlington, Virginia.

Based on the foregoing, and properly considering all claims, the total amount paid by Hartford to CCI for fraudulent claims is $26,988.00. It is worth noting again that it appears Robert Kolar made the decision to apply the OTC site losses to the 1035 CQ mail policy other than the time when the BOP 2409 policy was used to pay the $39,000.00 ($38,500.00) loss at Little Creek.

The Government also contends that the $10,000.00 claim of loss made to Lloyd's of London should be included as part of the loss in this case. As the parties agree that this $10,000.00 claim was never paid, the Government contends this figure should be included as an intended loss.

The Government's argument is that because the Defendant was aware that $10,000.00 was missing prior to issuance of the Lloyd's of London policy, it is necessarily a fraudulent claim.

The Government's position is inconsistent with its previous position and also ignores the unrebutted testimony of the broker of that policy, Robert Walker. Mr. Walker testified that he was aware that the Defendant suspected Jeffrey and Virginia Simpson of being responsible for the missing $10,000.00, although there was no proof and no verification of the loss until after the Lloyd's policy was issued. Trial Transcript Morning November 21, 2002, pp. 206-231. Mr. Walker testified that the $10,000.00 claim submitted to Lloyd's was appropriately submitted. There is no evidence that the terms and provisions of the Lloyd's policy did not cover the $10,000.00 claim submitted by CCI, even assuming the facts to be as the Government contends. Lloyd's certainly suffered no loss and has not claimed that it was defrauded by the Defendant. Moreover, there is no evidence that Lloyd's was not made fully aware of all the facts as presented by the Government.

The Government has indicated previously that it was not seeking to include the $10,000.00 claim to Lloyd's in the amount of loss in this case. The Government, by and through Assistant United States Attorney David Cortes, conceded in open court on April 25, 2003 that the $10,000.00 Lloyd's claim should not be included in the loss calculation and stated at that time that he did not want " . . . to go near the [$10,000.00] Fenchurch [Lloyd's] loss." Defendant likewise respectfully requests that the $10,000.00 loss not be included in the calculation of loss in this case.

Finally, it is important to note that the $10,000.00 was "missing" from the Raleigh vault. There is no dispute that the Hartford policy covered losses at the Raleigh vault. The Government concedes this point. Thus, if Defendant believed the "loss" of the $10,000.00 occurred in 1995 or 1996, there would have been no impediment to filing a claim of loss for the $10,000.00 with Hartford at that time, rather than waiting until the audit to be done.

Based on the foregoing, Defendant respectfully submits that the amount of loss in this case does not exceed $26,988.00.

III. THERE IS INSUFFICIENT EVIDENCE FOR THE COURT TO FIND THAT DEFENDANT WAS AN ORGANIZER OR LEADER OF CRIMINAL, ACTIVITY INVOLVING FIVE OR MORE PERSONS AND THEREFORE THE FOUR-POINT UPWARD ADJUSTMENT FOR ROLE IN THE OFFENSE UNDER U.S.S.G. § 3B1.1 SHOULD NOT BE APPLIED.

As to each of the categories of offenses of which Defendant has been convicted, the evidence shows that persons other than Defendant were organizing, leading and committing the acts; i.e. making false statements in FNS-250 reports and submitting false insurance claims to Hartford.

The probation office recommends a four-point upward adjustment for role in the offense pursuant to U.S.S.G 3B1.1(a) on the grounds that Defendant was an organizer or a leader of the criminal activity involving five or more persons or was otherwise extensive. In support of this recommendation, the probation office states in paragraph 61, page 19 of the Presentence Report, "[t]he defendant held the positions of majority owner, president and chief executive officer of Cost Containment, Inc. Investigation revealed that the Defendant was fully aware of the ongoing illegal activity, as he devised the scheme and directed the overall activities of the company and its participants. Pursuant to 3B1.1(a), the offense level is increased by four levels." PSI, p. 19.

Aside from being factually incorrect, the purported basis for the recommended enhancement oversimplifies and misconstrues the true nature of the Defendant's managerial role and the corporate structure that existed at the time of the criminal conduct at issue in this case.

First, contrary to the presentence report, the Defendant was not the majority owner of CCI. In fact, Defendant and his wife together only owned forty-four (44) percent of CCI. Secondly, a separate corporation, Centurion Courier, was solely responsible for the over-the-counter (OTC) issuance of food stamps, until December 31, 1997, when CCI merged with Centurion Courier. This separate corporation was not owned by Donald Morrison, rather Cynthia Morrison owned fifty (50) percent and CCI (the corporation) owned the other fifty (50) percent of Centurion Courier. Exhibit 3, p.5. Cynthia Morrison, not Donald Morrison, controlled Centurion Courier. Exhibit 3, p.5.

The Government's evidence essentially is that Defendant was aware of the practice of using the combined inventory method to replenish and remove food stamps at various OTC sites to balance shortages or surpluses. Knowledge of an activity, however, does not translate into a finding that the person with such knowledge was an organizer or leader of the activity. By all accounts, Cynthia Morrison was solely in charge of Centurion Courier and the OTC issuance of food stamps. Government witnesses confirm that Cynthia Morrison, not Donald Morrison, was responsible for the OTC sites and the OTC issuance of food stamps.

Government witness Jeffrey Simpson stated Cynthia Morrison operated Centurion Courier until she died May 30, 1997. Simpson further stated that Cynthia Morrison "used the slush fund extensively to make up for shortages at CCI sites, as she caused food stamps to be moved in and out of the slush fund from different county sites." Exhibit 4, Statement of Jeffrey Simpson. Although there is evidence that the Defendant was aware of the inventory accounting practices of Centurion Courier, there is no evidence that the Defendant organized, led, or otherwise occupied a leadership role with respect to such actions and the OTC issuance of food stamps.

The Government relies heavily on the testimony of Jeffrey Simpson and Virginia Simpson in support of its contention that the Defendant was an organizer or leader with respect to the offenses involving the FNS-250 reports.

Virginia Simpson stated to Agent Myers that "Cynthia Morrison was in charge of all of the county office sites. Cynthia's function was the chief operating officer of Centurion Courier, a subsidiary of CCI. Centurion Courier's purpose was to handle over the counter issuances." Exhibit 5, Statement of Virginia Simpson.

In an attempt to implicate the Defendant, Donald Morrison, Virginia Simpson told Agent Myers on June 25, 1998 that " . . . about 10 years ago she observed

Donald Morrison remove food stamps from 'the drawer.' She did not know what he did with the food stamps.'" Exhibit 5, p.4, Virginia Simpson Statement. Thus, Virginia Simpson accused Defendant of personally taking food stamps from the "drawer" or "slush fund" ten years earlier in 1988. In fact, however, neither CCI nor Centurion Courier was engaged in over-the-counter (OTC) issuance of food stamps until 1994. Exhibit 6, p.1, Parke Steve Wagner Statement. Thus in 1988 there would have been no need for a "drawer" or "slush fund" to make up shortages at OTC sites. Prior to 1994, there were no OTC sites and all issuance was done by mail in North Carolina.

This Honorable Court must weigh the credibility of the witnesses in determining whether the Government has met its burden of proving that Defendant was an organizer or leader. Jeffrey and Virginia Simpson admitted to stealing food stamps and giving them to other employees for their personal use.

Neither the Government nor the probation office mentions that Parke Steven Wagner stated in his interview with Agent Myers that "Donald Morrison was not aware of the "slush fund." Exhibit 6, p.4.

In sum, there is insufficient evidence to show that Defendant was an organizer or leader of the criminal activity involving the false statements in the FNS-250 reports.

As to the mail fraud offenses, there is also insufficient evidence that Defendant was an organizer or leader of criminal activity. The Government contends that the Defendant was responsible for submitting the insurance claims to Hartford. In support of this contention the Government references a Proof of Loss form that Defendant signed. The Government contends this proves that Defendant testified untruthfully when he said he was not involved in submitting claims and that he was in fact responsible for submitting insurance claims, and thus was an organizer or leader of the mail fraud offenses.

The Government's argument is incorrect and rebutted by the statements of the Government's witnesses. First, a proof of loss form is not a claim. A proof of loss form is sent to the insured after a claim has been made. The proof of loss form in this case, which Defendant signed, was prepared and filled out by Robert Kolar, the broker for Hartford, after claims had been submitted and after the claims had been paid. Either Robert Kolar or Hartford had already assigned the loss claim to the IM 1035 CQ mail loss policy, as reflected on the Proof of Loss form. A careful review of the Government's Exhibits 4 and 5 reveals the error of the Government's argument. Presumably, the Government is contending that the Proof and Loss forms signed by the Defendant constitute the submission of claims and the mailing element of the mail fraud offenses. Yet, as shown by the Government's Exhibits 4 and 5, the $2,127.00 check from Hartford to CCI for payment in claim 693 IM 85827 was paid on March 11, 1997. Exhibit 1. The proof of loss form in claim 693 IM 85827 was not signed by the Defendant until March 31, 1997, well after the claim of loss had been submitted and paid by Hartford to CCI. Exhibit 2. The same is true for the $10,358.00 paid by Hartford to CCI in claim 693 IM 85205. The claim was paid on March 11, 1997 and the proof of loss form was signed on March 31, 1997. Exhibit 1. As Agent Myers stated in his report, on one occasion a claim for Norfolk was submitted by CCI to Hartford as a site loss under the BOP 2409 policy. Part of that claim was paid as a mail loss by Hartford. See Exhibit 3, p. 31. Either Robert Kolar and/or Hartford chose to apply the loss to the IM 1035 CQ mail loss policy on that occasion, not CCI or the Defendant. Thus, Defendant did not testify untruthfully when he said he did not submit claims for insurance.

Secondly, and more importantly, Government witnesses confirm that Robert Wagner, not the Defendant, filed insurance claims for CCI. Jeffrey Simpson stated to Agent Myers that, "Robert Wagner normally filed claims with the insurance company for CCI." Exhibit 4, p.6, Statement of Jeffrey Simpson. Tammy Bagley also stated to Agent Myers and Douglas Funderburg that "Robert Wagner files the insurance claims for CCI." Exhibit 7, p.3, Statement of Tammy Bagley.

Finally, both the presentence report and the Government's Sentencing Memorandum overlook the fact that at the time these offenses were committed, the Defendant had relinquished managerial authority over CCI. The Defendant's K-1 tax records, as reflected in Agent Myers' Report, reveal the Defendant's steadily decreasing role in the management of CCI, prompted in part, but not completely, by the death of his wife in May 1997. The Defendant's income from CCI in 1996 was $174,156.00. In 1997, the year his wife died, Defendant's income was $115,501.00. In 1998, Defendant's income from CCI was $68,610.00. Exhibit 3, p,6. This steady decrease in income coincided with the Defendant's relinquishment of managerial responsibility at CCI.

While it is true that the Defendant retained the title of President for a time and Chairman of the Board, the fact is that during the relevant time period, the Defendant was not involved in running the day to day operations of the company.

IV. DOWNWARD DEPARTURE

The Defendant, by and through his previous counsel, Vaughn Winborne, filed a Motion for Downward Departure on April 22, 2003. Undersigned counsel would renew that motion at this time and request the court to depart downward from the advisory guideline range on the grounds stated in the previous motion, which is attached hereto as Exhibit 8.

V. A VARIANCE SENTENCE OF TIME SERVED IS APPROPRIATE IN THIS CASE BASED ON THE SENTENCING FACTORS SET FORTH IN 18 U.S.C. § 3553(A).

The Fourth Circuit Court of Appeals has set forth the necessary procedure for imposing sentence under the advisory sentencing guidelines as follows:

> First, the court must correctly determine, after making appropriate findings of fact, the applicable guideline range. Next, the court must determine whether a sentence within that range serves the factors set forth in § 3553(a) and, if not, select a sentence within statutory limits that does serve those factors. In doing so, the district court should first look to whether a departure is appropriate based on the Guidelines Manual or relevant case law . . . If an appropriate basis for departure exists, the district court may depart. If the resulting departure range still does not serve the factors set forth in § 3553(a), the court may then elect to impose a non-guideline sentence (a "variance sentence"). The district court must articulate the reasons for the sentence imposed, particularly explaining any departure or variance from the guideline range. The explanation of a variance sentence must be tied to the factors set forth in § 3553(a) and must be accompanied by findings of fact as necessary. The district court need not discuss each factor set forth in § 3553(a) in checklist fashion; it is enough to calculate the range accurately and explain why (if the sentence

> lies outside it) this defendant deserves more or less.
>
> ("[A] district court's job is not to impose a 'reasonable' sentence. Rather, a district court's mandate is to impose a sentence sufficient, but not greater than necessary, to comply with the purposes of section 3553(a)2. Reasonableness is the *appellate* standard of review in judging whether a district court has accomplished its task." (internal quotation marks omitted))."

United States v. Davenport, 445 F.3d 366, 370 (4th Cir. 2006).

To the extent the Court determines the advisory guideline range to be greater than the time the Defendant has already been incarcerated awaiting trial and sentencing undersigned counsel respectfully requests this Honorable Court to grant a variance from the advisory guideline range and impose a sentence of time served. The Defendant respectfully submits that a sentence of time served is consistent with and serves the sentencing factors set forth in 18 U.S.C. 3553(a).

A. History and Characteristics of the Defendant

The Defendant is presently seventy-four (74) years old. Prior to this case, he had a spotless record and an excellent reputation. He has served his country with honor, bravery and distinction. He is a decorated Vietnam War Veteran, having received the Army Commendation Medal. Defendant was honorably discharged after nine years of military service. Upon his discharge from military service, Mr. Morrison completed his Bachelor of Arts degree from Wake Forest University. While working as Assistant Director of Department of Social Services, Defendant obtained a masters degree in social work from UNC-Chapel Hill.

The Defendant has been and remains to this day a good and loving father to his four children. He has provided and cared for them throughout their lives.

If ever a man's prior deeds evidencing his good character should hold him in good stead, it is when he must appear before a court of justice to be sentenced. Congress surely recognized this important point when it mandated in 18 U.S.C. 3553 that Courts consider "the history and characteristics of the defendant" in determining an appropriate sentence.

Now, at the age of seventy-four (74) years, he stands before this Honorable Court to be sentenced and undersigned counsel respectfully submits that he is deserving of leniency because of his life of service to his country, his community and his family.

Moreover, undersigned counsel respectfully asks this Court to consider the Defendant's age in deciding whether to impose a Variance Sentence. Mr. Morrison has had health problems, of which this Court is aware. Given his age, additional prison time would not further the purposes of sentencing set forth in 18 U.S.C. 3553(a).

B. Nature and Circumstances of the Offense

The offenses can essentially be broken down into two main categories: 1) the offenses involving false statements on the FNS-250 food stamp reports; and 2) the mail fraud offenses involving Hartford Insurance Company.

In essence, the offenses involving false statements made in the FNS-250 reports involved the application of a "combined inventory" approach to the counting and reporting of food stamp inventory. CCI treated its entire inventory of food stamps in its possession for *all* the counties it served as one combined inventory. CCI treated the food stamps issued for each individual county as being merely part of that larger combined inventory.

Defendant has been convicted by a jury of making false statements in the FNS-250 reports. According to the Government's evidence, if the ending daily inventory of food stamps for a particular OTC issuance site revealed either a shortage or a surplus, CCI employees would come to the OTC site and correct the shortage or surplus by either bringing additional food stamps or taking surplus food stamps away, in order to balance the inventory report for the site. The Government contends and the jury found this was an improper and illegal practice, and that the transfer of food stamps in this manner and the failure to report either surpluses or shortages in inventory on the FNS-250 reports, constituted a false statement. That is the essence of the offenses against Defendant involving the FNS-250 reports.

The "mail Fraud" offenses essentially involved the submission of insurance claims by CCI to Hartford Insurance Company which the Government contends and the jury found were fraudulent. The basis of the alleged fraud was that the insurance claims were being submitted by CCI to Hartford for payment as mail losses under the IM 1035-CQ mail-loss policy, (which only covered losses of food stamps in the mail), when in fact the food stamps were not lost in the mail, but rather were lost at the over-the-counter (OTC) issuance sites in Norfolk, Chesapeake and Arlington, Virginia. (These locations only issued food stamps at OTC sites and had no mail issuance.)

The nature and circumstances of these offenses and the Defendant's role therein do not require the imposition of a sentence greater than the time the Defendant has already served. The Defendant did not personally receive any of the money paid to CCI from Hartford. All of the money paid to CCI was paid to the county that sustained the loss. As to the FNS-250 reports, the Defendant likewise received no personal gain from this practice; indeed there was no monetary loss. Assuming the accuracy of the Government's legal position for purposes of sentencing, CCI and the Defendant engaged in improper accounting practices to balance the inventory reports (FNS-250) that were sent to the counties by using the combined inventory approach; to wit: by physically balancing the ending inventory at each OTC site by either replenishing food stamps to OTC sites with a shortage or removing food stamps from OTC sites with a surplus. The two (2) years Defendant has been incarcerated is adequate punishment for these offenses.

C. A variance sentence of time served reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense. (18 U.S.C. 3553(a)(2)(A))

As stated above, this case involved two categories of offenses; 1) false statements in FNS-250 food stamp inventory reports; and 2) mail fraud involving insurance claims submitted by CCI to Hartford. All of Defendant's co-defendants, Parke Steven Wagner, Robert C. Wagner, Jr. and Tammy Bagley, received probationary sentences, even though the uncontradicted evidence showed that each of them played a major role in the identical conduct which Defendant has been convicted. Defendant has been incarcerated pending trial and sentencing in this case since he was arrested in December 2005. Imposition of a two (2) year active prison sentence, which reflects the time Defendant has already served, is just punishment for these offenses and promotes respect for the law and reflects the seriousness of those offenses; especially in light of the fact that all of the other co-defendants received probation.

D. A sentence of time served will afford adequate deterrence to criminal conduct and will protect the public from further crimes committed by the defendant. (18 U.S.C. 3553(a)(2)(B)(C))

Prior to this case, the Defendant had no prior criminal record. He is now seventy-four (74) years old. CCI is no longer in business. The Defendant does not pose any risk of future criminal conduct. An active sentence of two (2) years in prison for these offenses surely provides adequate deterrence to criminal conduct.

E. A variance sentence of time served is necessary to avoid unwarranted sentence disparities among the defendants with similar records who have been found guilty of similar conduct.

In addition to the Defendant, there are three co-defendants in this case, Parke Steven Wagner, Robert Wagner, Jr., and Tammy Bagley. As discussed herein, each of these co-defendants was directly and substantially involved in the criminal conduct for which the Defendant stands convicted. Tammy Bagley maintained supervisory authority with respect to the FNS-250 inventory reports. In fact, she was the head of Centurion Courier, the company that was responsible for all of the OTC issuance sites, after Cynthia Morrison died in 1997. Tammy Bagley received a sentence of six (6) months probation. Parke Steven Wagner, was chief of operations at CCI from

1993-1995 and was responsible for the day to day operations of CCI. In 1996, Parke Steven Wagner was promoted to Vice-President and continued to be responsible for the day to day operations of CCI. On January 1, 1998, Parke Steven Wagner became President of CCI. See Exhibit 6, p.1. Parke Steven Wagner was a major participant in the identical conduct for which the Defendant has been convicted. Parke Steven Wagner received a sentence of three (3) years probation. Robert Wagner, Jr., also an officer of Centurion Courier and a major participant in the conduct for which Defendant was convicted, received a sentence of twelve (12) months probation. See attached Exhibits 9, 10 and 11, Judgments of Conviction.

One of the primary objectives of the sentencing guidelines is to prevent disparity in sentences for similar criminal conduct by similar offenders. Imposition of a sentence greater than the two (2) years incarceration that Defendant has already served would not further that objective or the sentencing factor set forth in 18 U.S.C. 3553(a)(7).

Undersigned respectfully requests that this Honorable Court impose a sentence in this case equal to the time the Defendant has already served.

RESPECTFULLY SUBMITTED this the 1st day of December, 2007.

/s/ George B. Currin
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